

**Public Consultation on  
Legislative Proposals to Regulate Over-the-Counter Trading of  
Virtual Assets**

**FOREWORD**

1. This consultation document is issued by the Financial Services and the Treasury Bureau (“FSTB”) for seeking views on legislative proposals to regulate over-the-counter (“OTC”) trading of virtual assets (“VA”) through the introduction of a licensing regime for providers of VA OTC services under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“AMLO”).
2. FSTB welcomes written comments on or before 12 April 2024 through any of the following channels –  
  
By mail:     Division 5, Financial Services Branch  
                  Financial Services and the Treasury Bureau  
                  24/F, Central Government Offices  
                  Tim Mei Avenue, Tamar Central, Hong Kong  
  
By email:    [vaotc-consult@fstb.gov.hk](mailto:vaotc-consult@fstb.gov.hk)
3. FSTB may, as appropriate, reproduce, quote, summarise and publish the written comments received, in whole or in part, in any form and use without seeking permission of the contributing parties.
4. Names of the contributing parties and their affiliations may be referred to in other documents we publish and disseminate through different means after the consultation. If any contributing parties do not wish to have their names or affiliations disclosed, please expressly state so in their written comments. Any personal data provided will only be used by FSTB, other government departments/agencies for purposes which are related to this consultation.

# CHAPTER 1

## INTRODUCTION

### Purpose

- 1.1 This document sets out for public consultation regarding the conceptual framework and key parameters of the legislative proposals to put in place a licensing regime for VA OTC services, under which operators will need to be licensed and be required to observe anti-money laundering and counter-terrorist financing (“AML/CTF”) regulations and other regulatory requirements. Views and comments from stakeholders concerned are invited to facilitate our formulation of the details of the legislative proposals.

### Background

- 1.2 In October 2022, the Government issued a Policy Statement on Development of VA in Hong Kong, setting out the Government’s vision and policy direction for the VA sector. In particular, the Policy Statement sets out the Government’s commitment to developing a comprehensive framework for the regulation of VA activities under the “same activity, same risks, same regulation” principle.
- 1.3 For VA trading platforms (“VATPs”), the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2022 was enacted in December 2022 to provide for a holistic regulatory regime, complying with the AML/CTF requirements<sup>1</sup> stipulated by the Financial Action Task Force (“FATF”)<sup>2</sup>, as well as providing for investor protection<sup>3</sup>. Under the regime, which commenced

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<sup>1</sup> Including requirements such as customer due diligence (“CDD”) and record keeping.

<sup>2</sup> The FATF is an inter-governmental body established in 1989 that sets international standards for combating money laundering and terrorist financing. It comprises 40 members, including Hong Kong in the capacity of Hong Kong, China.

<sup>3</sup> Including requirements on safe and segregated custody of clients’ assets, financial soundness and avoiding conflict of interest.

operation in June 2023, any person engaging in VATPs business is required to apply for a licence from the Securities and Futures Commission (“SFC”) as the regulator, subject to fulfilling a fit-and-proper test, which includes, among others, AML/CTF and investor protection requirements. The SFC is equipped with supervisory, investigative and intervention powers. Persons not complying with the requirements concerned are liable to administrative and criminal sanctions.

- 1.4 As of end-January 2024, two VATPs are licensed under the Securities and Futures Ordinance (Cap. 571) (“SFO”) <sup>4</sup> for providing Type 1 (dealing in securities) and Type 7 (providing automated trading services) services. Both have obtained the SFC’s approval to provide services to retail investors. Save for these licensed VATPs, as of end-January 2024, 14 applications for AMLO licences are being processed by the SFC.
- 1.5 As the development of VA is fast-evolving, the Government and financial regulators have kept in view the changing landscape, market development, risks and international regulatory discussion. The scope of regulation of VA activities is periodically reviewed to ensure that the risks associated with the development of the sector could be properly managed.
- 1.6 In 2023, a number of fraud cases associated with alleged VATPs have brought heightened public concerns over the risks of such VA activities. While the activities of VATPs fall under the regulatory remit of the relevant regime, the cases have unveiled the involvement of VA OTC shops. In particular, some VA OTC shops have served as one of the main avenues for channeling retail

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<sup>4</sup> Prior to the introduction of the licensing regime under the AMLO, the SFC introduced in 2018 an opt-in regime for VATPs to voluntarily come under the SFC’s regulatory remit under the SFO by trading at least one security token. With the new licensing regime, VATPs providing trading services for VA (which exclude any security tokens) are required to be licensed under the AMLO. Given that the terms and features of VA may evolve over time and change from a non-security token to a security token (or vice versa), to avoid contravening any of the licensing regimes under the SFO and the AMLO and ensure business continuity, VATPs are advised to apply for approvals under both Ordinances and become dually-licensed. To ensure regulatory parity, the regulatory requirements and standards for the AMLO and the SFO have been aligned.

investors' funds to the suspected fraudulent schemes (e.g. by making false or misleading statements about having a VATP's status). Under such circumstances, the Government sees a need to bring VA OTC services within the statutory regulatory remit through legislative amendments, with a view to ensuring that the "same activity, same risks, same regulation" principle is observed and sufficient investor protection is provided for.

## **Legislative Proposals**

- 1.7 We propose amending the AMLO to introduce a new licensing regime for providers of VA OTC services. Taking reference from the VATP licensing regime, as well as that for the money service operators ("MSOs"), the proposed VA OTC regime will require licensees of VA OTC services to meet a host of licensing and regulatory requirements as well as AML/CTF obligations as set out in the ensuing sections.
- 1.8 Under the proposed regime, any person who conducts a business in providing services of spot trade of any VA<sup>5</sup> in Hong Kong is required to be licensed by the Commissioner of Customs and Excise ("CCE"), subject to a fit-and-proper test and other factors deemed relevant by CCE. Licensed VA OTC operators will be subject to the AML/CTF requirements under Schedule 2 to the AMLO and other regulatory requirements.
- 1.9 This regime will cover all VA OTC services irrespective of whether the services are provided through a physical outlet and/or other platforms. VATPs will be explicitly excluded as they are already covered under the existing VATP licensing regime.
- 1.10 CCE will be provided with powers for enforcing the regime and regulating licensed VA OTC service providers in accordance with the statutory requirements.

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<sup>5</sup> Adopting the definition of VA in the VATP licensing regime, as set out in section 53ZRA of the AMLO, which refers to a cryptographically secured digital representation of value that possesses a range of features (including being expressed as a unit of account or a store of economic value, used for payment for goods or services, discharge of a debt etc).

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

## CHAPTER 2

### REGULATION OF SERVICE PROVIDERS OF OVER-THE-COUNTER TRADING OF VIRTUAL ASSETS

- 2.1 There is an emerging consensus globally that VA regulations should address the potential money laundering/terrorist financing (“ML/TF”) risks posed to the international financial system, given the growing prevalence of trading in cryptocurrencies and other VA. Specifically, VA are considered to be vulnerable to ML/TF risks because they enable greater pseudonymity or anonymity and decentralisation compared to traditional transfer, safe-keeping or custodian means, and such features can be abused to facilitate layering of crime proceeds into fiat money through interfaces with the traditional financial system.
- 2.2 To address the ML/TF risks of VA activities, the FATF revised its standards, under Recommendation 15, in February 2019 to require jurisdictions to regulate VA service providers (“VASPs”) for AML/CTF purposes and supervise their compliance. In essence, the FATF requires jurisdictions to impose on VASPs the full range of AML/CTF obligations that are currently applicable to financial institutions and designated non-financial businesses and professions (“DNFBPs”)<sup>6</sup>, through prohibition, or licensing or registration mechanisms which would subject VASPs to the same AML/CTF requirements as financial institutions and DNFBPs.
- 2.3 Further, VA, of which many do not have any intrinsic value and are highly speculative and volatile, also pose considerable challenges to investor protection, as evident in their association with fraud, security breach and market manipulation, both globally and locally.
- 2.4 The VATP licensing regime came into effect on 1 June 2023 against this backdrop. While the activities of VATPs have been put under

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<sup>6</sup> DNFBPs include real estate agents, lawyers, notaries, accountants, trust or company service providers, and dealers in precious metals and stones.

the regulatory remit of the SFC through the regime, there are unregulated VA activities exposing the investing public to ML/TF and misconduct risks, particularly those resultant from frauds. It has particularly been unveiled that some suspected fraudulent schemes had attracted retail investors' funds through affiliated VA OTC shops which made use of their physical outlets and social media platforms to attract customers by deceptive means.

- 2.5 As a ballpark estimate derived from preliminary onsite observations carried out by the law enforcement agencies, there are some 200 physical VA OTC shops (including those in the form of automatic teller machines (“ATMs”)) in operation and about 250 digital platforms or active online posts on services of buying and selling VA in Hong Kong. Taking into account the roles of these VA OTC services in channeling the investing public's funds, as well as their significant presence in the Hong Kong market, there is a strong need to bring their operations into the regulatory remit to ensure that AML/CTF measures are put in place and investor protection is catered for.

### **Scope of Regulation**

- 2.6 We propose requiring any person operating VA OTC business in Hong Kong, or actively marketing the provision of VA OTC services to the Hong Kong public, to obtain a licence issued by CCE, subject to meeting a fit and proper test and other regulatory requirements. VA OTC business will be defined as –
- (a) by way of business, provision of service of spot trade of any VA;
  - (b) irrespective of whether the service is provided through a physical outlet (i.e. including ATMs) or other (e.g. digital) platforms; and
  - (c) explicitly excluding the operation of a VATP<sup>7</sup> as already covered under the VATP licensing regime.

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<sup>7</sup> As defined in Schedule 3B to the AMLO.

- 2.7 Part (a) of the definition is drawn up to specify the coverage of spot trading activities by VA OTC. Any business activity of spot trading of VA<sup>8</sup> will be captured. With the addition of the limb of “by way of business”, this definition is not intended to cover peer-to-peer trading of VA between individuals unless the trade forms the business activity of either party. Such arrangement is consistent with international standards such as the requirements stipulated by the FATF.
- 2.8 In a similar vein, part (b) of the definition is proposed to cater for the wide range of business forms of VA OTC operators. Under the “same activity, same risks, same regulation” principle, we see the need to ensure that all forms of VA OTC services will fall under the regulation of the proposed regime.
- 2.9 While the proposed definition above has set out the scope of VA OTC service providers that will have to be licensed, it is further observed that operators of VA trading services may also provide temporary custody/escrow service for client’s VA as part of the transaction process. Considering that the provision of such temporary custody/escrow service could involve operational risks and investor protection concerns, views are welcome on whether operators of VA OTC services who provide temporary custody/escrow service as part of the transaction process should be covered by the proposed regulatory regime, and whether there should be dedicated regulatory requirements for such temporary custody/escrow service.

**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?**

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<sup>8</sup> This will not cover a person who is not a party to the contract or binding transaction (e.g. online platforms/online applications/instant messaging systems whereby the operator simply maintains a platform for posting/facilitating peer-to-peer trades).



## **Eligibility**

- 2.10 To ensure sufficient nexus for effective supervision and monitoring, we propose that a licence applicants must be (i) a locally incorporated company with a permanent place of business in Hong Kong, or (ii) a company incorporated elsewhere but registered in Hong Kong under the Companies Ordinance (Cap. 622).
- 2.11 Considering the prevailing brick-and-mortar operation of VA OTC services in Hong Kong, an applicant will be required to identify suitable premises for its operation. As regards digital VA OTC operators, they will be required to provide information on the address of the local management office, the correspondence address and the place for local storage of books and records. In determining whether an applicant is fit and proper, CCE will consider all relevant matters, including, among others, whether the applicant (or its any directors or ultimate owners) has been convicted in Hong Kong or elsewhere of a ML/TF offence or a serious offence<sup>9</sup>; has been convicted in Hong Kong or elsewhere of an offence in which the person is found to have acted fraudulently, corruptly or dishonestly; has been the subject of any bankruptcy or liquidation proceedings; or has failed or may fail to observe the AML/CTF and other applicable requirements.

**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?**

## **Regulatory Requirements - Activities Allowed**

- 2.12 In respect of the regulated activities, licensees can perform spot trade of any VA for any money<sup>10</sup>, or vice versa, in their course of businesses. As regards the conversion of a VA to another VA, it

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<sup>9</sup> Offences specified in Schedules 1 or 2 to the Organized and Serious Crimes Ordinance (Cap. 455) or similar offences elsewhere.

<sup>10</sup> Following the definition of “ money (金錢)” under the MSO regime, as set out in Schedule 1 to the AMLO, i.e. “money in whatever form or currency”.

is proposed that licensees should not be permitted to provide such trades<sup>11</sup>. In other words, service providers seeking to provide VA-to-VA trading services should consider applying for a VATP licence.

- 2.13 Licensees will only be allowed to perform remittance of exchange proceeds on specified conditions. To provide services on remittance of fiat money, based on the “same activity, same risks, same regulation” principle, licensees will need to apply for a MSO licence<sup>12</sup>. As regards transfer of VA after sale to clients, in order to mitigate ML/TF risks, licensees will only be allowed to transfer the VA concerned from their registered wallets (see paragraph 2.14) to a client wallet in respect of which the clients can provide proof of ownership and/or control<sup>13</sup>.
- 2.14 Licensees will need to make an application with CCE on the full list of wallets to be used in their operations and register the list with CCE, as well as ensure that the list is up-to-date. Provision of other services, including any form of VA advisory or referral services, offering of VA derivatives or other financial products (including but not limited to staking, lending and margin trading), will not be permitted. As for direct or indirect custody/escrow service of client’s VA by licensees, the initial thinking is that this will not be permitted unless the custody/escrow service for client’s VA is temporary in nature and is an indispensable part of the transaction process.
- 2.15 As regards the types of VA that can be offered to customers for VA OTC trading, considering that VA OTC operators will serve the investing public, thus requiring a more stringent standard of supervision to offer adequate investor protection, we propose only allowing VA OTC licensees to offer services in respect of tokens

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<sup>11</sup> As reflected by market participants, most of the trades conducted through OTC shops involve buying or selling of VA using fiat money. VA-to-VA trades through OTC shops are uncommon.

<sup>12</sup> Consideration will be given to streamlining the application process where applicable to minimise compliance cost.

<sup>13</sup> Use of a wallet not owned by the VA OTC client is not allowed. Some examples of confirmation methods of ownership may include requesting the customer to perform the micropayment test (i.e. confirming that the firm can transfer a very small amount to the wallet address designated by the customer and ask the customer to send it back).

that may be accessed by retail investors on at least one SFC-licensed VATP<sup>14</sup> and stablecoins issued by issuers licensed by the Hong Kong Monetary Authority (“HKMA”) upon implementation of the proposed licensing regime for stablecoin issuers. That is to say, a licensed VA OTC operator offering services in respect of any tokens not accessible to retail investors on at least one SFC-licensed VATP or any stablecoins not issued by issuers licensed by the HKMA will contravene the VA OTC regulatory regime. This approach ensures that tokens accessible to retail investors are subject to proper approval procedures, and prevents regulatory arbitrage.

**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?**

**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?**

### **Other Regulatory Requirements**

2.16 To keep VA OTC operators on par with other regulated entities, we propose that licensees will be required to observe the AML/CTF requirements stipulated in Schedule 2 to the AMLO relating to CDD and record-keeping.

2.17 On top of that, given the tech-savvy and highly speculative nature of VA, as well as the accessibility to VA OTC services by the general public, we consider it necessary for VA OTC licensees to be subject to a set of robust regulatory requirements to ensure that they have the capacity and know-how to operate the VA OTC business properly, thereby mitigating the potential risks to investors

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<sup>14</sup> As of end-January 2024, SFC-licensed VATPs are providing trading in Bitcoin and Ethereum to retail investors.

arising from any system failure or security breach.

2.18 Considering that the modus operandi of VA OTC services straddles the VA and money service sectors, reference has been made to the VATP and MSO regimes in drawing up the regulatory requirements, covering, *inter alia*, the following –

- (a) Appointment of a competent Compliance Officer and a Money Laundering Reporting Officer – it is necessary to ensure that fit and proper personnel of a licensee will be held responsible for satisfying the relevant requirements pertaining to the granting of a licence;
- (b) Competence/knowledge and experience – a licensee is required to have a proper corporate governance structure staffed by personnel with the necessary knowledge of and experience with VA to enable the effective discharge of responsibilities;
- (c) Soundness of business – a licensee is required to operate its business in a prudent and sound manner, and ensure that clients and public interests will not be adversely affected<sup>15</sup>;
- (d) Conduct – a licensee is required to act honestly, fairly, with due skill, care and diligence, in the best interests of its clients and the integrity of the market, as well as comply with all statutory and regulatory requirements applicable to the conduct of its business activities;
- (e) Risk management – a licensee is required to have in place appropriate risk management policies and procedures for managing ML/TF<sup>16</sup>, cybersecurity and other risks arising from its activities that are commensurate with the scale and complexity of its business; and

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<sup>15</sup> Among others, a licensee needs to submit an accurate and up-to-date staff list for CCE's retention.

<sup>16</sup> Among others, a licensee has to subscribe for AML tools to carry out fund tracing functions.

(f) Record keeping – a licensee is required to maintain proper records of transactions and fund flows, which will be accessible to CCE as and when CCE considers necessary.

2.19 CCE will grant a licence only when the specified requirements are met. VA OTC licensees will be subject to disciplinary and investigative proceedings and enforcement actions in case of non-compliance with the AML/CTF and other regulatory requirements.

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

### **Licence Period and Transitional Period**

2.20 As the landscape of the VA market changes rapidly, there is a need for CCE to regularly review whether a VA OTC operator remains in possession of the necessary competence and capacity to run the business properly. As such, we propose that a successful applicant be granted a licence of two years, renewable for two years upon application and to the satisfaction of CCE.

2.21 To facilitate transition into the new licensing regime of legitimate existing VA OTC operators carrying on a business in Hong Kong, we propose providing a transitional period for these operators immediately before the commencement of the regime. Taking into account the objective of investor protection and the needed time for preparing for the commencement of the regime (e.g. for processing applications), the current thinking is to provide a transitional period of six months.

2.22 Making reference to the VATP regime and the registration regime for dealers in precious metals and stones, we are currently considering two options of transitional arrangement:

***Option 1 – No Deeming Arrangement:*** A transitional period of six months. During the transitional period, pre-existing VA OTC service providers will be allowed to continue their operations until

the end of the six-month period, on condition that they have to submit within the first three months a licence application to CCE. Upon the end of the transitional period, all VA OTC service providers have to be licensed to carry out any regulated activity. Pre-existing VA OTC service providers that do not submit a licence application to CCE within the first three months of the commencement of the transitional period will need to close down their business in an orderly manner by the end of the fourth month of the commencement of the transitional period.

***Option 2 – With Deeming Arrangement:*** Similar to option 1, pre-existing VA OTC service providers will be allowed to continue their operations until the end of a six-month transitional period, on condition that they have to submit within the first three months a licence application to CCE. For those applicants that are able to meet the requirements specified by CCE, 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. Powers will be provided to CCE to revoke or amend the “deemed licence” as CCE considers appropriate.

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

**Q9 In respect of the transitional arrangement, do you prefer Option 1 or Option 2, and why?**

## **Exemption**

2.23 In accordance with the existing regulatory regimes under the AMLO, the SFO and the Banking Ordinance (Cap. 155) (“BO”), VATPs, licensed corporations and authorized institutions<sup>17</sup> are already placed under the robust regulation of the SFC and the HKMA, as applicable. We therefore propose that these entities if providing VA OTC services be exempted from the new licensing

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<sup>17</sup> As defined under section 2 of the BO.

regime. We also propose that, subject to the implementation of another licensing regime for stablecoin issuers<sup>18</sup>, similar exemption may be considered to be accorded to licensed stablecoin issuers.

**Q10 Do you agree with the exemption arrangement?**

**Prohibition**

2.24 To prevent the investing public from being exposed to risks associated with unlicensed VA OTC activities, we propose to prohibit any person from actively marketing<sup>19</sup>, whether in Hong Kong or elsewhere, to the public of Hong Kong a regulated VA OTC service, unless the person is licensed by CCE for conducting the regulated VA OTC service.

**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?**

**Powers of the Licensing Authority**

2.25 As the licensing authority, CCE will be empowered to supervise the AML/CTF conduct of VA OTC licensees and enforce the statutory and regulatory requirements under the new regime. Specifically, CCE will have the powers to enter licensees' business premises for conducting routine inspections; to investigate into suspected non-compliances and to remove evidence of commission of offence; to carry out arrest and search; to impose disciplinary sanctions (including civil penalty and suspension or revocation of a licence) against non-compliances. In view of the enforcement experience under the VATP regime, consideration is being given to providing for additional powers to prevent access to websites or digital

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<sup>18</sup> See "[Legislative Proposal to Implement the Regulatory Regime for Stablecoin Issuers in Hong Kong – Consultation Paper](#)" jointly issued by FSTB and the HKMA in December 2023.

<sup>19</sup> Reference is made to a similar provision under section 53ZRB of the AMLO.

platforms (in or outside Hong Kong) of VA OTC operators involved in unlicensed or fraudulent activities.

- 2.26 CCE will also be empowered to impose licensing conditions, and/or add to, vary or modify existing conditions. Given the potential interface of a VA OTC licensee with related businesses (e.g. VATP or MSO operations), CCE will be able to obtain information from relevant authorities (e.g. the SFC and the HKMA) for the purpose of investigating into licensees' suspected non-compliances.

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

### **Sanctions**

- 2.27 Past cases have suggested that a VA OTC operation inherently entails risks in respect of ML/TF and other criminal activities such as fraud. Given the severity of such potential unlawful deeds, the penalty level for unlicensed VA OTC services should be able to achieve the necessary deterrent effect. In this respect, we propose that carrying out a regulated VA OTC service<sup>20</sup> without a licence will be liable, on conviction on indictment, to a fine of \$1 million and to imprisonment for two years<sup>21</sup>.

- 2.28 We also propose to make it an offence for any person to knowingly issue an advertisement relating to an unlicensed person's provision of VA OTC services, who will be liable to a fine at level 5 (currently at \$50,000) and to imprisonment for six months<sup>22</sup>.

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<sup>20</sup> Including actively marketing, whether in Hong Kong or from a place outside Hong Kong, to the Hong Kong public, a regulated VA OTC service, or any service which would constitute a regulated VA OTC service if it is conducted in Hong Kong.

<sup>21</sup> Reference is taken from section 29(2) of the AMLO which provides that a person operating a money service without licence is liable on conviction on indictment to a fine of \$1 million and to imprisonment of two years.

<sup>22</sup> Reference is taken from section 53ZRE of the AMLO which provides that a person knowingly issuing an advertisement relating to an unlicensed person's provision of VA service is liable to a fine at level 5 and to imprisonment of six months.



2.29 In case of non-compliance with the statutory AML/CTF requirements, a licensee will be liable, on conviction on indictment, to a fine of \$1 million and to imprisonment for two years. The licensee may also be subject to a range of administrative sanctions, including suspension or revocation of licence, reprimand, remedial order and/or a pecuniary penalty (not exceeding \$500,000), for misconduct (e.g. contravening other regulatory requirements)<sup>23</sup>.

2.30 The existing AMLO provisions on offences in respect of fraudulent and misleading activities will apply to VA OTC licensees. It is an offence for any person to engage in fraudulent or deceptive behaviour in transactions involving VA, who will be liable to a fine of \$10 million and to imprisonment for 10 years<sup>24</sup>. It is also an offence for any person to make a fraudulent or reckless misrepresentation for the purpose of inducing another person to engage in a transaction involving VA, who will be liable to a fine of \$1 million and to imprisonment for seven years<sup>25</sup>.

**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?**

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

### **Statutory Appeal**

2.31 We propose amending Part 6 of the AMLO to expand the scope of reviewable decisions of the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal to cover the appeals against the future decisions to be made by CCE in implementing the new VA OTC licensing regime.

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<sup>23</sup> Reference is made to the sanctions applicable to VATPs and MSOs regulated under the AMLO.

<sup>24</sup> Section 53ZRF of the AMLO.

<sup>25</sup> Section 53ZRG of the AMLO.

**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?**

## CHAPTER 3

### NEXT STEPS

- 3.1 We welcome views/comments from the public and sectors concerned in taking forward the legislative exercise. Respondents are invited to offer their views/comments on the proposals set out in this consultation document by 12 April 2024.
- 3.2 Taking into account the views/comments received, and subject to the progress of the preparatory work, we aim to introduce a bill on the proposed VA OTC licensing regime into the Legislative Council as soon as practicable.

#### Overview of Consultation Questions

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

- 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?**
- Q7 Should other regulatory requirements be added to mitigate the potential ML/TF and fraud risks of VA OTC services?**
- Q8 Do you agree that a VA OTC licence should be renewed biennially?**
- Q9 In respect of the transitional arrangement, do you prefer Option 1 or Option 2, and why?**
- Q10 Do you agree with the exemption arrangement?**
- 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?**
- Q12 Do you agree that CCE should be provided with the proposed powers?**
- 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?**
- Q14 Do you agree with the proposed sanctions, which are comparable to those under the existing regulatory regimes for VATPs and MSOs?**
- 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?**