

Hong Kong Licensing Regime for Virtual Asset Service Providers - Amended Anti-Money Laundering and Counter-Terrorist Financing

On December 7, 2022, the Legislative Council (“LegCo”) of the Hong Kong Special Administrative Region (“HKSAR”) passed the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 (“Amended AMLO”) into law. The same day, the LegCo’s Bills Committee also published a report (“Report”), providing clarification on certain concepts under the Amended AMLO, and explained the postponed timelines for the commencement of the licensing regime for virtual asset service providers (“VASPs”).

Some of the key takeaways are as follows:

1. The operation of a virtual asset (“VA”) service will become a “regulated function”, such that VASPs will, in the future, be required to apply for a licence from the Securities and Futures Commission (“SFC”), before they can operate in Hong Kong.
2. The licensing requirements to be imposed on VASPs is likely to be modelled on existing requirements for the SFC’s licensing of regulated activities under the Securities and Futures Ordinance. This includes the fitness and properness requirements, and the requirement for a licensed VASP to have at least two responsible officers.
3. The SFC has discretion to impose a range of licensing conditions on a VASP licensee, including conditions relating to financial resources, risk management policies and procedures, management of client assets, virtual asset listing and trading policies, prevention of market manipulation and abusive activities, avoidance of conflicts of interest, among other requirements that can be imposed by the SFC as a licence condition.
4. The licensing regime for VASPs is primarily intended to capture the operation of a VA exchange. However, the Government could expand the scope of “VA service” to cover other forms of VA activities, when the Government considers it necessary to do so in the future.

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5. Licensed VASPs will be required to comply with existing requirements under the AMLO on customer due diligence and record-keeping requirements, which will be comparable to traditional financial institutions.
6. A new enforcement regime applicable to VASPs will be introduced. Under the Amended AMLO it will be a criminal offence to carry on a business of providing VA service without a VASP licence and to issue advertisements relating to an unlicensed person's provision of VA service. It will also become a criminal offence to make fraudulent or reckless misrepresentations with the intention to induce others to invest in VAs and an offence to employ deceptive or fraudulent device, scheme or act, directly or indirectly, in a transaction involving VAs (which is likely to capture market manipulation activities).
7. Relevantly, the offences of making fraudulent or reckless misrepresentations or employing deceptive or fraudulent devices, schemes or acts, are not limited to transactions on licensed VASPs and as such will capture all individuals and/or firms engaging in this type of conduct with a substantial nexus to Hong Kong.
8. The SFC will be granted a significant range of supervisory powers over licensed VASPs. This includes the power to enter the business premise of a licensed VASPs to conduct routine inspections of business records, request production of documents and other records, and to investigate non-compliance and impose disciplinary sanctions against licensed VASPs in contravention.

Postponement to the Commencement of the Amended AMLO and the Licensing Regime for VASPs

In the Report, the Government proposed to postpone the commencement of the Amended AMLO and the licensing regime for VASPs. Set out below is a summary of the original timeline and the new timeline for the commencement of the amended AMLO and the licensing regime for VASPs, as well as the timing implications for the transitional period and the deadline to submit an application to the SFC under the licensing regime for VASPs.

Event	Original timeline	New timeline
<p>Commencement date of the Amended AMLO</p> <p>(Note that the criminal offences for fraudulent or reckless misrepresentations, or employing deceptive or fraudulent devices, schemes or acts, in relation to VA transactions, commences from this date.)</p>	January 1, 2023	April 1, 2023
<p>Commencement date of the licensing regime for VASPs (“VASP Regime Commencement Date”)</p>	March 1, 2023	June 1, 2023
<p>Start date for the 12 months transitional period (“Transitional Period Start Date”) for any corporation that has been carrying on the business of providing a VA service in Hong Kong immediately <u>before</u> the VASP Regime Commencement Date (“Existing VASPs”), during which time the Existing VASP can carry on VA service in Hong Kong without a VASP licence.</p>	Starting from March 1, 2023	Starting from June 1, 2023
<p>Deadline of the 9 months period for Existing VASPs to file an application to the SFC for a licence under the licensing regime for VASPs, to be deemed to be licensed from the day after the expiry of the 12 months’ transitional period (“Application Deadline”).</p>	By no later than December 1, 2023	By no later than March 1, 2024

Existing VASPs that file an application to the SFC by the Application Deadline will be deemed to be a licensed VASP from the day after the expiry of 12 months from the Transitional Period Start Date (i.e., June 2, 2024) until the SFC has made a decision to either approve or reject their licence application, or the licence applicant withdraws their application.

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