

```
procedure FormCreate(Sender: TObject);  
procedure TreeViewChange(Sender: TObject; Node: TTreeNode);  
procedure EditChange(Sender: TObject);  
procedure TreeViewChanging(Sender: TObject; Node: TTreeNode;  
  var AllowCancel: Boolean);  
procedure FindQueryString(Sender: TObject; var CanClose: Boolean);  
procedure TreeViewKeyDown(Sender: TObject; var Key: Word;  
  Shift: TShiftState);  
procedure TreeViewMouseDown(Sender: TObject; Button: TMouseButton;  
  Shift: TShiftState; X, Y: Integer);  
procedure TreeViewMouseDown(Sender: TObject; Node: TTreeNode;  
  var S: String);  
procedure TreeViewDragOver(Sender, Source: TObject; X, Y: Integer;  
  State: TDragState; var Accept: Boolean);  
procedure FormResize(Sender: TObject);  
procedure FormKeyDown(Sender: TObject; var Key: Word;  
  Shift: TShiftState);  
procedure TreeViewKeyPress(Sender: TObject; var Key: Char);  
procedure FormClose(Sender: TObject; var Action: TAction);  
procedure FormActivate(Sender: TObject);  
procedure FormMod23Click(Sender: TObject);  
procedure FormPropClick(Sender: TObject);  
procedure FormPopClick(Sender: TObject);  
  
procedure GetWakeUpMessage(var Message: TMessage); message MWIM_WakeUP;  
procedure GetActivateAppMessage(var Message: TMessage); message MWIM_ACTIVATEAPP;  
procedure GetMYNOTIFYMessage(var Message: TMessage); message MWIM_MYNOTIFY;  
  
procedure mipExitClick(Sender: TObject);  
procedure mipRestoreClick(Sender: TObject);  
procedure StatusBarDrawPanel(StatusBar: TStatusBar;  
  Panel: TStatusPanel; const Rect: TRect);  
procedure TreeViewDragDrop(Sender, Source: TObject; X, Y: Integer);  
procedure TreeViewEndDrag(Sender, Target: TObject; X, Y: Integer);
```

SFC's new licensing regime  
for virtual asset services  
providers (VASPs)

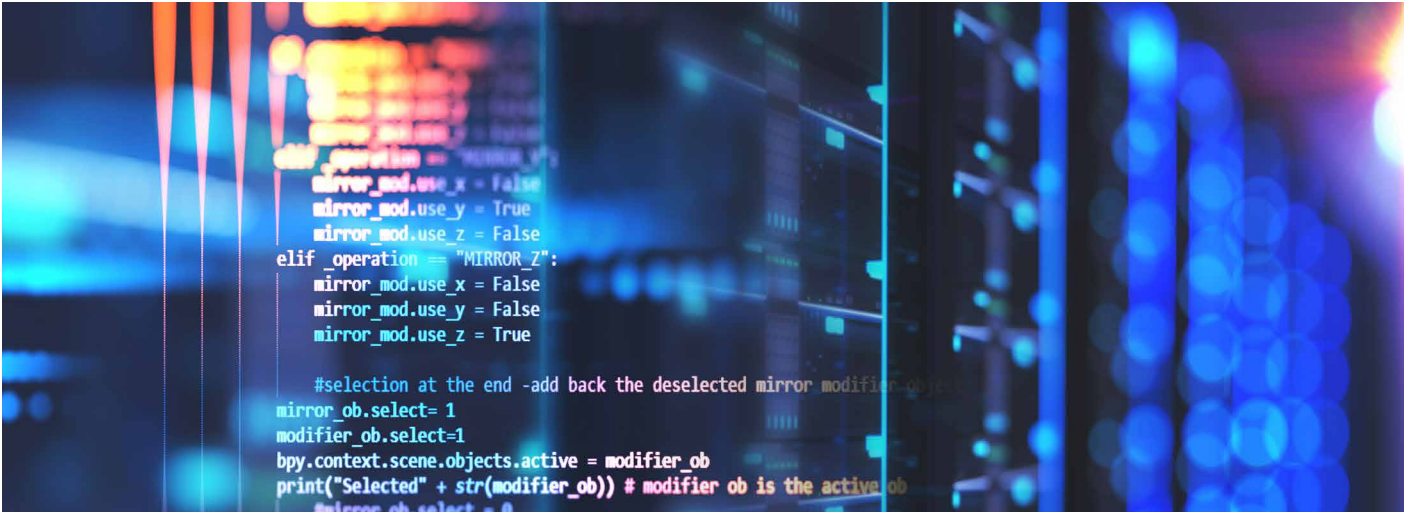


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The background of the image features a dark blue and black color scheme with various financial data visualizations. On the right side, there is a prominent candlestick chart with white bars and blue lines, showing price fluctuations. Below it, a bar chart with white bars is visible. In the bottom right corner, a portion of a laptop screen is shown, displaying a grid and some data points. The overall aesthetic is modern and tech-oriented, typical of a financial or fintech report.

On 4 November 2020, the Hong Kong Financial Services and Treasury Bureau ("FSTB") has issued a public consultation for seeking views on legislative proposal to introduce a new licensing regime for virtual asset services providers whereby any person seeking to conduct the regulated business of virtual asset trading platforms in Hong Kong will be required to apply for a license.

Previously, Securities and Futures Commission ("SFC") has issued a position paper in November 2019 for licensing of VASPs (SFC type 1 & 7 license) under an opt-in scheme. It applies to platform which enable clients to trade virtual asset ("VAs") with securities features (e.g. security token). With the new proposal, the proposed regulations are meant to cover VASPs that trade non securities virtual assets as well (e.g. cryptocurrencies) under the Anti-Money Laundering Ordinance ("AMLO"). It is broadly welcomed by the market as it is seen as a big step to protect investors' interest and enable the healthy continuous development of a virtual asset sector in Hong Kong.



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# Limitation of current licensing regime

Currently, the SFC's regulatory perimeter only extends to VAs that satisfy the definition of "securities" or "futures contracts" under the Securities and Futures Ordinance ("SFO"). One of the prerequisites for licensing is that the VASPs must offer trading of at least one VA with securities feature. Such VASPs would then fall within the regulatory boundary of SFC. However, the opt-in approach has a significant limitation which is also acknowledged by SFC that it let out a limbo area for those VASPs to remain off the regulatory radar by simply trading non-securities VA. By doing so, the VASPs could continue to operate as unregulated businesses.

The new proposed regulatory regime, on the other hand, covers all VASPs that trade non securities VAs, either operate in Hong Kong or actively market their VA products to the public of Hong Kong. Most importantly, the new licensing regime would protect the investors' interest whilst ensure the VASPs to fulfil the requirements on anti-money laundering and terrorist financing.





# New opportunities

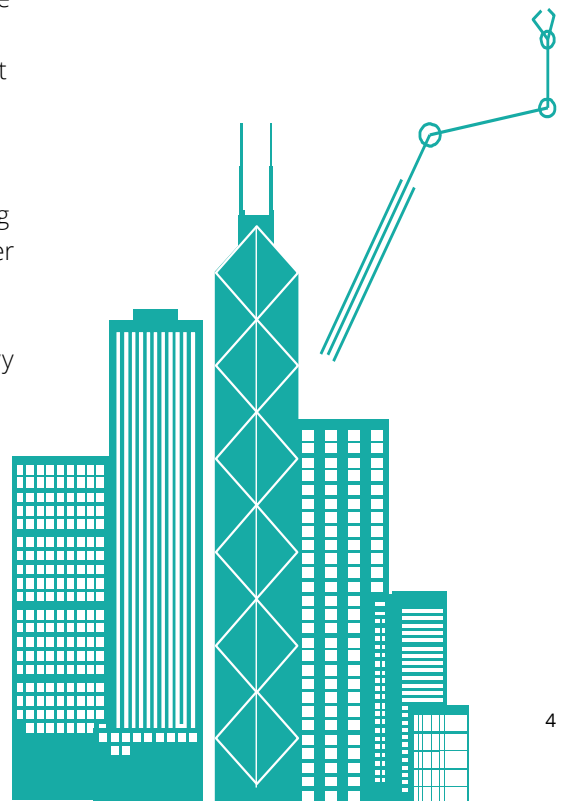
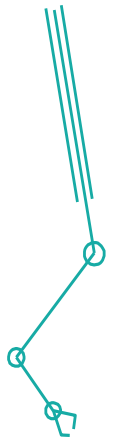
Hong Kong is widely recognized as an international financial centre with the high reputation. One of the most fundamental factors of Hong Kong's success is the robust legal and regulatory framework that enable investors to feel comfortable to invest in Hong Kong. To keep pace with the swiftly developed financial innovation, the introduction of the new licensing regime can underpin Hong Kong's competitive advantage by providing a strong legal basis to regulate and supervise the VA trading activities. This is crucial to the further development of the industry as it will strengthen the market confidence by creating an appropriate baseline standards and levels of supervision that commensurate investments' expectation in Hong Kong.

There is also a huge potential for the related upstream and downstream industry chain such as business in blockchain technology services providers, expert legal advisors, custodian, etc. to thrive in a way with a balance in nurturing technology innovation but also protect the general interest of public.

# Key requirements

Only locally incorporated companies are eligible for the application and the responsible officers ("ROs") to the regulated activities and ultimate owners will be subject to the fit and proper test. Those VASPs should only offer service to professional investors.

Licensing requirements for the proposed new licensing regime include Schedule 2 to the AMLO as well as other requirements that are currently observed by various VASPs licensed under the opt-in regime. However, the requirements will vary as needed due to the tech-savvy and highly speculative nature of the VA industry.



# Global insight

With VAs bringing changes to the financial landscape, regulators dealing with money laundering and terrorist financing ("ML/TF") around the world have taken up the role to ensure that these VASPs are being monitored within their jurisdiction.

## USA



### Financial Crimes Enforcement Network | *Bank Secrecy Act ("BSA")*

- Convertible virtual currencies are required to adhere to the BSA obligations, which include to maintaining an effective risk based anti-money laundering and counter terrorist financing program.
- The BSA maintains a Travel Rule that requires all financial institutions to pass on certain information to the next financial institution for transmittal of funds that are greater than \$3,000.

## GBR



### Financial Conduct Authority

- The Cryptoasset Taskforce was established in March 2018 to monitor the activities of cryptoassets and distributed ledger technology.
- The 5<sup>th</sup> Anti Money Laundering Directive ("5MLD") has empowered the Financial Intelligence Units to obtain information of virtual currency owners such as the address and identities, hence reducing the anonymity associated with cryptocurrency.

## JPN



### Financial Services Agency of Japan ("JFSA") | *Payment Services Act & Financial Instruments and Exchange Act*

- JFSA requires all the virtual currency exchange operators to be registered with the JFSA.
- Cryptocurrency exchange is required to check the identity of the customers who open accounts, maintain records of the transactions done and notify authorities if any suspicious transaction is identified.

## AUS



### Australian Transaction Reports and Analysis Center ("AUSTRAC") | *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

- AUSTRAC requires cryptocurrency exchanges operating within the jurisdiction of Australia to be registered.
- The Guide to Preparing and Implementing an AML/CFT program was issued and subsequently updated in 2020, which serves to bring out the important considerations that digital currency exchange operators need to take when designing their AML/CFT system.

# Anti-money laundering risk assessment and compliance obligations

From above, it can be seen that it is important for the VASPs to identify, mitigate and manage ML/TF risk. This requires participation from Senior Management to all employees within the VASP. Risk assessment should be conducted by identifying all potential risk in terms of products, services, customer and geography and the strength of the compliance controls in place.



## Key focus of anti-money laundering measures

### 1. Customer Due Diligence

Customer due diligence plays an important role that VASPs do not meet their clients face-to-face. As a result, VASPs are unable to verify or identify the documents that the customer provided directly. Any technology solutions are recommended to be adopted for identity authentication and matching (e.g. facial recognition, liveness detection).

### 2. Name screening

Name screening is another vital part. It is critical for VASPs to identify if any of their customer is political exposed person or listed in Sanctions name list such as the OFAC or UN sanctions list.

### 3. Transaction Monitoring and Suspicious Transaction Reporting

Suspicious activities involving the use of VAs may share similar traits with ML/TF activities related to the use of fiat currency, or other kinds of assets. VASPs should therefore consider monitoring transactions for irregular or uncommon patterns including but not limited to the use of multiple VASPs with no logical business or new users that attempt to trade the entire balance of VAs. Transaction size should also be monitored in terms of amount and frequency to detect illogical transactions such as structuring the VA transactions in amounts under reporting thresholds or making multiple high-value transactions in a staggered and regular pattern.





# The next step

The public consultation closes on 31 Jan 2021 and it will take some time to complete the legislative process.

We anticipate significant long term benefit from the introduction of this new licensing regime, by shoring up Hong Kong's competitive edge in the regulation and supervision of virtual asset trading and further develop the growth of the industry. We will share with you more of our insights and perspectives as and when future development occurs.

# Key contacts

## Assurance



**Brian Chan**  
**Partner**  
**Hong Kong**

Tel: +852 2531 1828  
Email: briantkchan@deloitte.com.hk



**Ted Ho**  
**Partner**  
**Hong Kong**

Tel: +852 2852 6489  
Email: teho@deloitte.com.hk



**Adrian Yeung**  
**Director**  
**Hong Kong**

Tel: +852 2852 1938  
Email: adyeung@deloitte.com.hk



**Wilson Cheung**  
**Director**  
**Hong Kong**

Tel: +852 2852 6609  
Email: wilcheung@deloitte.com.hk



**Candy Pan**  
**Associate Director**  
**Hong Kong**

Tel: +852 2852 1013  
Email: candypan@deloitte.com.hk

## Blockchain



**Paul Sin**  
**Partner**  
**Hong Kong**

Tel: +852 2852 6448  
Email: psin@deloitte.com.hk

## AML and Sanctions services



**Chris Cheung**  
**Partner**  
**Beijing**

Tel: +852 2238 7205  
Email: chrcheung@deloitte.com.cn



**Albert Lo**  
**Partner**  
**Hong Kong**

Tel: +852 2238 7093  
Email: alblo@deloitte.com.hk

# Office locations

## Beijing

12/F China Life Financial Center  
No. 23 Zhenzhi Road  
Chaoyang District  
Beijing 100026, PRC  
Tel: +86 10 8520 7788  
Fax: +86 10 6508 8781

## Changsha

20/F Tower 3, HC International Plaza  
No. 109 Furong Road North  
Kaifu District  
Changsha 410008, PRC  
Tel: +86 731 8522 8790  
Fax: +86 731 8522 8230

## Chengdu

17/F China Overseas  
International Center Block F  
No.365 Jiaozi Avenue  
Chengdu 610041, PRC  
Tel: +86 28 6789 8188  
Fax: +86 28 6317 3500

## Chongqing

43/F World Financial Center  
188 Minzu Road  
Yuzhong District  
Chongqing 400010, PRC  
Tel: +86 23 8823 1888  
Fax: +86 23 8857 0978

## Dalian

15/F Senmao Building  
147 Zhongshan Road  
Dalian 116011, PRC  
Tel: +86 411 8371 2888  
Fax: +86 411 8360 3297

## Guangzhou

26/F Yuexiu Financial Tower  
28 Pearl River East Road  
Guangzhou 510623, PRC  
Tel: +86 20 8396 9228  
Fax: +86 20 3888 0121

## Hangzhou

Room 1206  
East Building, Central Plaza  
No.9 Feiyunjiang Road  
Shangcheng District  
Hangzhou 310008, PRC  
Tel: +86 571 8972 7688  
Fax: +86 571 8779 7915

## Harbin

Room 1618  
Development Zone Mansion  
368 Changjiang Road  
Nangang District  
Harbin 150090, PRC  
Tel: +86 451 8586 0060  
Fax: +86 451 8586 0056

## Hefei

Room 1201 Tower A Hua Bang ICC Building  
No.190 Qian Shan Road  
Government and Cultural  
New Development District  
Hefei 230601, PRC  
Tel: +86 551 6585 5927  
Fax: +86 551 6585 5687

## Hong Kong

35/F One Pacific Place  
88 Queensway  
Hong Kong  
Tel: +852 2852 1600  
Fax: +852 2541 1911

## Jinan

Units 2802-2804, 28/F  
China Overseas Plaza Office  
No. 6636, 2nd Ring South Road  
Shizhong District  
Jinan 250000, PRC  
Tel: +86 531 8973 5800  
Fax: +86 531 8973 5811

## Macau

19/F The Macau Square Apartment H-L  
43-53A Av. do Infante D. Henrique  
Macau  
Tel: +853 2871 2998  
Fax: +853 2871 3033

## Mongolia

15/F, ICC Tower, Jamiyan-Gun Street  
1st Khoroo, Sukhbaatar District  
14240-0025 Ulaanbaatar, Mongolia  
Tel: +976 7010 0450  
Fax: +976 7013 0450

## Nanjing

40/F Nanjing One IFC  
347 Jiangdong Middle Road  
Jianye District  
Nanjing 210019, PRC  
Tel: +86 25 5790 8880  
Fax: +86 25 8691 8776

## Ningbo

Room 1702 Marriott Center  
No.168 Heyi Road  
Haishu District  
Ningbo 315000, PRC  
Tel: +86 574 8768 3928  
Fax: +86 574 8707 4131

## Sanya

Floor 16, Lanhaiuating Plaza  
(Sanya Huaxia Insurance Center)  
No. 279, Xinfeng street  
Jiyang District  
Sanya 572099, PRC  
Tel: +86 898 8861 5558  
Fax: +86 898 8861 0723

## Shanghai

30/F Bund Center  
222 Yan An Road East  
Shanghai 200002, PRC  
Tel: +86 21 6141 8888  
Fax: +86 21 6335 0003

## Shenyang

Unit 3605-3606,  
Forum 66 Office Tower 1  
No. 1-1 Qingnian Avenue  
Shenhe District  
Shenyang 110063, PRC  
Tel: +86 24 6785 4068  
Fax: +86 24 6785 4067

## Shenzhen

9/F China Resources Building  
5001 Shennan Road East  
Shenzhen 518010, PRC  
Tel: +86 755 8246 3255  
Fax: +86 755 8246 3186

## Suzhou

24/F Office Tower A, Building 58  
Suzhou Center  
58 Su Xiu Road, Industrial Park  
Suzhou 215021, PRC  
Tel: +86 512 6289 1238  
Fax: +86 512 6762 3338 / 3318

## Tianjin

45/F Metropolitan Tower  
183 Nanjing Road  
Heping District  
Tianjin 300051, PRC  
Tel: +86 22 2320 6688  
Fax: +86 22 8312 6099

## Wuhan

Unit 1, 49/F  
New World International Trade Tower  
568 Jianshe Avenue  
Wuhan 430000, PRC  
Tel: +86 27 8526 6618  
Fax: +86 27 8526 7032

## Xiamen

Unit E, 26/F International Plaza  
8 Lujiang Road, Siming District  
Xiamen 361001, PRC  
Tel: +86 592 2107 298  
Fax: +86 592 2107 259

## Xi'an

Room 5104A, 51F Block A  
Greenland Center  
9 Jinye Road, High-tech Zone  
Xi'an 710065, PRC  
Tel: +86 29 8114 0201  
Fax: +86 29 8114 0205

## Zhengzhou

Unit 5A10, Block 8, Kailin Center  
No.51 Jinshui East Road  
Zhengdong New District  
Zhengzhou 450018, PRC  
Tel: +86 371 8897 3700  
Fax: +86 371 8897 3710



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