

GIBSON DUNN

Financial Regulatory Update

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Hong Kong Concludes Consultations on Regulation of Virtual Asset Dealing and Custodian Services – With Yet More to Come

This update provides a detailed overview of the key takeaways for the industry from the Consultation Conclusions and the Further Consultation.

On December 24, 2025, the Financial Services and the Treasury Bureau (**FSTB**) and the Securities and Futures Commission (**SFC**) published consultation conclusions on legislative proposals to regulate virtual asset (**VA**) dealing (**VA Dealing Conclusions**) and custodian service providers (**VA Custody Conclusions**) in Hong Kong (collectively, the **Consultation Conclusions**).^[1] The Consultation Conclusions follow the FSTB and the SFC's joint consultations on VA dealing (**VA Dealing Consultation**) and custodian (**VA Custody Consultation**) regimes launched on June 27, 2025 (as discussed in our [previous client alert](#)).

In parallel with the release of the Consultation Conclusions, the FSTB and the SFC have also commenced a further public consultation on new licensing regimes for providers of VA advisory and management services (the **Further Consultation**).^[2] Comments in relation to the Further Consultation are due by January 23, 2026.

The short timeframe for comments on the Further Consultation reflects the FSTB and SFC's eagerness to progress the implementation of these regimes as a matter of priority, with the FSTB and SFC also flagging in the Consultation Conclusions that they intend to introduce a bill into the Legislative Council in 2026 to implement the VA dealing, custodian, advisory and management

service licensing regimes through amending the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (**AMLO**). This is consistent with the SFC's continued efforts throughout 2025 to implement its ASPIRE Roadmap and support the development of the virtual asset industry in Hong Kong.^[3]

We have set out below a detailed overview of the key takeaways for the industry from the Consultation Conclusions and the Further Consultation.

I. VA DEALING CONCLUSIONS

A. Scope and Coverage

As expected and supported by the industry, the SFC has clarified that the scope of the VA dealing definition under the AMLO will be aligned with the definition of Type 1 regulated activity (i.e. dealing in securities) under the SFO. In other words, the definition will cover any person, by way of business, making or offering to make any agreement with another person, or inducing or attempting to induce another person to enter into or offer to enter into an agreement, with a view to acquiring, disposing of, subscribing for or underwriting VAs (**VA Dealing Services**). However, in a significant shift from the definition proposed in the VA Dealing Consultation, the definition of VA Dealing Services will not cover making or offering to make an agreement where the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of VAs or by reference to fluctuations in the value of VAs. In carving out this activity from the definition of VA Dealing Services, the FSTB and SFC have noted that they consider these types of activities to generally be activities involving derivatives and structured products referencing VAs which in their view will generally fall within Type 1, Type 2 or Type 11 regulated activity under the SFO. The new licensing regime also will not cover providers dealing solely in tokenized securities (which will be covered under the SFO instead).

Frustratingly for the industry, the only clear exemption outlined by the FSTB and SFC from the definition of VA Dealing Services is for stablecoin issuers licensed by the Hong Kong Monetary Authority (**HKMA**) and conducting regulated stablecoin activity. All other potential exemptions discussed in the VA Dealing Conclusions – such as for those transactions conducted through SFC-regulated VA dealers, transactions as principal, intra-group transactions, use of VA for payments for goods or services, and incidental dealing by VA managers (as discussed in the Further Consultation), distribution of VAs generated as rewards for ledger maintenance and for VA issuers in relation to activities regarding VAs created by them - remain merely '*under consideration*.'

The VA Dealing Conclusions also indicate that a range of other topics relevant to the scope and coverage of this regime remain pending further consideration, including the following:

- while the provision of margin trading in VA will fall within the definition of VA Dealing Services, there is some uncertainty at this stage as to whether the SFC will ultimately permit licensed VA dealers to provide margin trading, with the VA Dealing Consultation flagging that this (along with applicable regulatory requirements) '*will be carefully assessed taking into account various factors such as client credit risk, liquidity risk and concentration risk, capital requirements, risk capital charges and operational controls requirements*'; and

- activities such as VA staking and VA borrowing and lending *'will also be considered'*.

The VA Dealing Conclusions has also flag that the SFC will take a *'substance over form'* approach to the definition of VA Dealing Services, as the paper flags that whether the provision of peer-to-peer transactions or the provision of decentralized or *'technological'* services will require a licence will depend on the substance of the activities (rather than the form or terminology used to describe the service) and whether the service is carried on as a business.

B. Dealing of VA through non-SFC licensed VATPs or liquidity providers

One of the most welcome developments in the VA Dealing Consultation for the industry was the suggestion that the FSTB and SFC would consider allowing licensed VA dealers to acquire or dispose of VAs for clients via non-SFC licensed virtual asset trading platforms (**VATPs**) or liquidity providers, subject to appropriate safeguards. Despite the *'vast majority'* of respondents supporting this proposal, the FSTB and SFC appear to have now backed away from embracing this development, notwithstanding the SFC's aim to integrate Hong Kong with global liquidity under the ASPIRE Roadmap. Instead, the VA Dealing Conclusions refer to the SFC's recent decision to allow SFC-licensed VATPs to integrate with intra-group liquidity via a shared order book.^[4] However, given that this particular reform was only introduced comparatively recently, we consider it unlikely that the levels of liquidity available through SFC-licensed VATPs using shared order books will be considered by the industry to be a sufficient substitute for being allowed to trade via non-SFC licensed VATPs or liquidity providers globally. Given this we expect continued pressure from the industry for the SFC to relax this requirement going forward.

The VA Dealing Conclusions do flag that *'looking ahead'*, the SFC will continue to incorporate market feedback through directly engaging with the industry and applicants via the pre-application process, and in doing so will ensure that *'the SFC's requirements are both practical and appropriately tailored to the diverse range of VA service providers'*.

C. Holding of client VAs with SFC licensed VA custodians

The VA Dealing Consultation asked for respondents to advise as to what a *'commercially viable and AML compliant operational flow to conduct VA dealing activities'* would look like if licensed VA dealers were required to hold client VAs only with SFC-licensed VA custodians.

The VA Dealing Conclusions note that a number of respondents supported this proposal in order to provide stronger assurance of safe custody, while others supported allowing firms to custody client VAs with licensed custodians regulated in jurisdictions which adhere to the standards of Basel Committee on Banking Supervision, International Organization of Securities Commissions or the Financial Action Task Force and also adhere to comparable standards of investor protection measures.

The FSTB and SFC have acknowledged the *'diverse'* perspectives of respondents on this particular point, and indicated that they will take comments into consideration in formulating the relevant regulatory requirements in order to appropriately balance investor protection, market efficiency and commercial viability. However, given that overseas regulation of custodians remains in a comparatively early stage of development, the SFC will require licensed VA dealers

to custody client VAs with SFC-regulated VA custodians. Notwithstanding this, the SFC will consider the operational feasibility of this requirement for payment facilitation or short-term settlement and will take the comments on these points into consideration in formulating the regulatory requirements that will apply to licensed VA dealers.

D. No Transitional Period

Consistent with the position outlined in the VA Dealing Consultation, the FSTB and SFC have indicated that there will be no deeming arrangement for existing VA dealers. Instead, the licensing regime will take full effect on the commencement date of the relevant statutory provisions. However, given the implications of a 'hard' commencement date, the Hong Kong Government and the SFC will consider an appropriate commencement date, taking into account the time market participants need to adjust their business models.

However, in the interim, the FSTB and SFC have encouraged entities already engaged in VA Dealing Services to reach out to the SFC or HKMA (as applicable) as soon as possible to initiate the pre-application process. During this early engagement, the SFC will walk pre-applicants through the application process.

An expedited licensing approval process will be available to SFC-licensed VATPs, licensed corporations and registered institutions currently providing VA Dealing Services to ensure a smooth transition to the new regime.

II. VA CUSTODY CONCLUSIONS

A. Scope and Coverage

The VA Custody Consultation originally proposed that a person would require a VA custodian service provider licence (**VA Custodian Licence**) if they, by way of business, safekept either (i) VAs on behalf of clients; or (ii) instruments enabling transfer of VAs of clients on behalf of clients. Taking into account the comments received and applying a risk-based approach, the FSTB and the SFC have decided to focus on limb (ii) of the originally proposed definition, such that a VA Custodian Licence will be required if a person safekeeps any instrument enabling the transfer of VAs for its clients (**VA Custodian Services**). The FSTB and SFC have indicated that this is intended to ensure that the licensing regime targets the '*core risk area*' in VA custody (i.e. entities which safeguard private keys), rather than capturing as top layer trustees or fund managers which delegate the VA custody function to a third-party custodian and whose own role in VA custody is administrative and contractual.

Importantly, the VA Custody Conclusions have provided helpful guidance as to whether providers of multi-party computation (**MPC**) services or other technology services will require a VA Custody Licence. The FSTB and SFC have indicated that this will be considered on a case-by-case basis, with the focus being on whether a '*person can unilaterally transfer its clients' VAs*'. In particular, the VA Custody Conclusions have indicated that:

- an MPC provider will not require a licence if its clients can transfer their own VAs (either together with the MPC provider or unilaterally) and its clients have the ability to reconstruct the complete private key independently or retrieve access to their VAs without

support from the MPC provider (e.g., where its clients can export the full cryptographic key without involving the MPC provider);

- an MPC provider may require a licence if its clients cannot unilaterally transfer their VAs (e.g. where a recovery kit has not been provided by the MPC service provider); and
- that the SFC is likely to also take into consideration whether the MPC provider's clients can independently access and manage their assets at all times.

We consider this guidance helpful on two fronts. First, the VA Custody Consultation's clear discussion of the applicability of this regime to MPC providers indicates in our view that the SFC *will* allow the use of MPC solutions by the industry going forward. This is an important and welcome development given the SFC's previous insistence that the associated entities of SFC-licensed VATPs use only Hardware Security Module (**HSM**) solutions to custody client VAs. Second, this guidance suggests that MPC providers which offer direct custody Wallets-as-a-Service or embedded wallet solutions should not require a VA Custodian Licence to provide such services or solutions to customers in Hong Kong.

Finally, the VA Custody Conclusions have helpfully flagged that the definition of VA Custodian Services is intended to be technology neutral, and that the SFC's focus in determining whether a specific decentralized model or provider of a specific technological service will require a licence will depend on the '*substance*' of the service provided. For example, a staking service provider which provides 'custodial' staking services through which it has the ability to unilaterally transfer client VAs will require a VA Custodian Licence. In contrast, a non-custodial wallet provider lacking the ability to transfer VAs will likely not require a licence.

B. Persons who will require a licence and licensing exemptions

The VA Custody Conclusions also provide a non-exhaustive list of entities that are likely to require a VA Custodian Licence:

- associated entities of SFC-licensed VATPs that currently provide VA Custodian Services under the VATP regime (and who wish to continue to do so in the future);
- SFC-licensed corporations which are licensed for Type 13 regulated activity under the SFO, as well as banks, subsidiaries of locally incorporated banks and stored value facilities, if they provide VA Custodian Services. This includes where such safekeeping is carried on as part of providing VA Dealing Services or acting as depositaries of SFC-authorized funds with VAs in the funds' portfolios; and
- licensed or registered fund managers, if they self-custody VAs by way of safekeeping the private keys or similar instruments which enable the transfer of fund VAs. However, this may be subject to a limited exemption for self-custody of new tokens which may not be subject to established VA custody infrastructures, which is under consideration).

The FSTB and the SFC have also indicated that certain licensing exemptions will be provided, including but not limited to exemptions for:

- entities that only custody VAs for their group companies;
- stablecoin issuers licensed by the HKMA under the Stablecoins Ordinance (Cap. 656) which custody only the stablecoins that issued by them; and
- for legal and accounting professionals that may be appointed to hold the back up of private keys or similar instruments for their clients or appointed by a court to administer assets, including VAs.

C. Individual licensing regime

One of the most noteworthy aspects of the VA Custody Consultation was the suggestion that the SFC would require group entities and/or their personnel involved in the safekeeping of private keys by a licensed VA custodian to be licensed or accredited. This would have reflected a significant departure from the SFC's approach to licensing of individuals and group entities to date.

The VA Custody Conclusions expressly acknowledge that '*many*' respondents did not consider it necessary for group entities to obtain licenses, and that concerns were raised in consultation responses that requiring multiple entities from the same corporate group to be licensed would lead to inefficiencies and regulatory overreach. Consistent with this feedback, the VA Custody Conclusions establish that:

- SFC-regulated VA custodians can rely on their overseas group resources and infrastructure without automatically triggering a requirement for group entities to be licensed, provided that the SFC-regulated entity retains the ability to '*independently and unilaterally move or transfer*' client VAs; and
- Overseas group entities must not market themselves to the public of Hong Kong as licensed by the SFC unless they are in fact licensed by the SFC.

Interestingly, the latter statement suggests that the SFC will be willing to licence entities based offshore. This would be a notable departure from the traditional approach taken by the SFC under the SFO to licensing only entities providing regulated activities in Hong Kong.

The VA Custody Conclusions also establish that all individuals performing '*core custody functions*' throughout the custody chain will also need to be individually licensed, and identify the following individuals in particular as requiring individual licences:

- senior management responsible for monitoring and supervision of the VA custodian;
- individuals who have direct access to private keys or the authority to initiate or approve VA transfers (i.e. including but not limited to the initiator and intermediate approvers);
- personnel participating in multi-signature or threshold signing schemes; and
- individuals with access to private key generation, storage or recovery systems.

The FSTB and SFC have also indicated that they expect only responsible officers (or executive officers for HKMA-registered VA custodians), managers-in-charge (or relevant managers HKMA-registered VA custodians) and their delegates to be authorized to carry out the above functions.

Additionally, individuals employed by group entities of the SFC-regulated VA custodian who are authorized to carry out these core custody functions must be accredited to the SFC-regulated VA custodian, and a proper delegation of authority from the licensed entity to the individual employed by the group entity must be obtained before the individual can access the private key or sign VA transactions.

Helpfully, the VA Custody Conclusions establish that individuals engaged in clerical roles (i.e. performing routine tasks following established procedures such as document filing or data input) will not require licences, nor will staff members of internal corporate functions of a VA custodian (e.g. those in HR, finance and accounting, legal and compliance roles). This is consistent with the approach taken by the SFC to the licensing of individuals under the SFO more broadly.

D. No Transitional Period

Consistent with the position outlined above in relation to the VA Dealing Services licensing regime, there will be no deeming arrangement for existing VA custodians. Instead, the licensing regime will take full effect on the commencement date of the relevant statutory provisions.

However, an expedited licensing approval process will be provided to associated entities of SFC-licensed VATPs, banks or subsidiaries of locally incorporated banks which have already undergone the SFC's or the HKMA's assessment process in relation to their VA Custodian Services and are already engaged in providing such services.

III. SUMMARY OF THE FURTHER CONSULTATION ON THE VA ADVISORY AND MANAGEMENT SERVICES LICENSING REGIMES

In response to industry feedback for clarification on the treatment of entities providing VA advisory and management services under the VA Dealing Services licensing regime, the SFC and the FSTB have indicated that they now intend to license VA advisory and VA management services as separate regulated VA services under the AMLO. This will mirror the existing securities licensing regime applicable to licensed corporations under the Securities and Futures Ordinance (Cap. 571) (**SFO**).

A. VA advisory service licensing regime

The Further Consultation proposes that any person who carries on a business of providing VA advisory services in Hong Kong (**VA Advisory Services**) must be licensed by or registered with the SFC. The proposed definition of 'advising on VA' mirrors the definition of 'advising on securities' under the SFO – i.e:

- giving advice on whether; which; the time at which; or the terms or conditions on which, VAs should be acquired or disposed of; or
- issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on whether; which; the time at which; or the terms or conditions on which, VAs are to be acquired or disposed of.

The FSTB and SFC have proposed providing a range of similar exemptions to those available in relation to Type 4 regulated activity under the SFO, namely, exemptions for:

- the provision of VA Advisory Services solely to wholly-owned group companies;
- VA Advisory Services that are wholly incidental to licensed VA dealing or solely for the purposes of licensed VA fund management;
- solicitors, counsels and certified public accountants for acts wholly incidental to their professional practice;
- VA Advisory Services that are wholly incidental to a registered trust company's discharge of duty; and
- VA Advisory Services that are conducted through a generally available publication or broadcast.

The SFC and FSTB have indicated that the regulatory requirements to be imposed on VA advisors are expected to broadly follow the existing regulatory requirements on Type 4 licensed corporations or registered institutions providing VA Advisory Services pursuant to the SFC and HKMA's Joint Circular on intermediaries' virtual asset-related activities dated December 22, 2023 (**December 2023 Joint Circular**).[\[5\]](#)

B. VA management service licensing regime

The Further Consultation proposed that any person who carries on a business of providing VA management services in Hong Kong (**VA Management Services**) must be licensed or registered with the SFC. The proposed definition of 'VA management' mirrors the definition of 'asset management' under the SFO – i.e. the provision of a service of managing a portfolio of VAs for another person. This definition will likely capture VA portfolio management services and VA discretionary account management services (e.g. where a firm is delegated with discretionary power to make investment decisions in VAs for a fund).

The FSTB and SFC have proposed providing a range of similar exemptions to those available in relation to Type 9 regulated activity under the SFO, namely, exemptions for:

- the provision of VA Management Services to wholly-owned group companies;
- VA Management Services that are wholly incidental to VA Dealing Services of a licensed VA dealer;
- solicitors, counsels and certified public accountants for acts wholly incidental to their professional practice; and
- VA Management Services that are wholly incidental to a registered trust company's discharge of duty.

Notably, the SFC and FSTB have proposed not setting a de minimis threshold (for instance, a stated investment objective or an intention to invest 10% or more of the gross asset value of a portfolio in VAs). This means that any entity providing asset management services for a portfolio that invests in VA will require a licence or registration, regardless of whether their portfolio has

only a negligible exposure to VA. The FSTB and SFC have stated that their rationale for not setting a de minimis threshold is to uphold regulatory standards and investor protection, and to align with the licensing regime for asset management under the SFO as well as the VA Dealing Services licensing regime which does not provide for any de minimis thresholds.

We anticipate that the regulatory requirements applicable to SFC-regulated VA managers will ultimately broadly align with those applicable to Type 9 licensed corporations engaged in VA management activities under the December 2023 Joint Circular. These include requirements in relation to matters such as fund portfolio valuation and risk management.

Consistently with the position taken in relation to VA dealing, the Further Consultation flagged that the SFC is considering whether VA managers should be required to safekeep the VAs of the private funds they manage only with SFC-regulated VA custodians, or whether they should have flexibility to appoint any custodians. We expect this area to be subject to considerable industry feedback.

The Further Consultation helpfully acknowledged the challenges encountered by private equity and venture capital fund managers in their custody of new tokens which is not supported by SFC-regulated VA custodians. The SFC and FSTB indicated that they will consider allowing self-custody by these fund managers up to a limited threshold without the need to obtain a VA Custodian Licence.

C. No Transitional Period

Consistent with the position stated in the Consultation Conclusions, the FSTB and SFC have not proposed to provide a deeming arrangement to pre-existing VA advisors and pre-existing VA managers. Instead, the licensing regime will become fully effective on the commencement date of the relevant statutory provisions. Industry stakeholders are encouraged to reach out to the SFC or HKMA (as applicable) as soon as possible to initiate the pre-application process. Likewise, an expedited licensing approval process will be available to entities which have already undergone the SFC's or the HKMA's assessment process in relation to their provision of VA Advisory Services or VA Management Services and are already engaged in these activities.

IV. CONCLUSION

The Consultation Conclusions and the Further Consultation are welcome developments in the regulation of the crypto ecosystem in Hong Kong. However, with respect to the VA Dealing Conclusions, there are a number of aspects of the regulatory requirements that are still under consideration by the SFC. Industry stakeholders already engaged in or interested in providing VA Dealing and VA Custodian Services are encouraged to engage with the SFC as soon as possible. VA dealers and VA custodians who do not contact the SFC or HKMA (as applicable) for pre-application may suffer business disruptions, as they will have to stop operations on the commencement date of the licensing regime. Specifically, with respect to entities providing VA Dealing Services, the SFC has said that early engagement would provide invaluable feedback on the setting of applicable regulatory requirements.

[1] “*Consultation Conclusions on Legislative Proposal to Regulate Dealing in Virtual Assets and Further Public Consultation on Legislative Proposal to Regulate Virtual Asset Advisory Service Providers and Virtual Asset Management Service Providers*”, jointly published by the FSTB and SFC on December 24, 2025, available [here](#) (**VA Dealing Conclusions**); and “*Consultation Conclusions on Legislative Proposal to Regulate Virtual Asset Custodian Services*”, jointly published by the FSTB and SFC on December 24, 2025, available [here](#) (**VA Custody Conclusions**).

[2] See the VA Dealing Conclusions (see the link in footnote 1 above).

[3] See our previous client alerts in relation to the implementation of the ASPIRE Roadmap [here](#).

[4] See our previous client alert [here](#).

[5] “*Joint circular on intermediaries’ virtual asset-related activities*” jointly published by the SFC and HKMA on December 22, 2023, available [here](#). See our previous client alert in relation to the December 2023 Joint Circular [here](#).

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Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding these developments. If you wish to discuss any of the matters set out above, please contact any member of Gibson Dunn’s Financial Regulatory team, including the following members in Hong Kong:

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