BLOG

# Securities and Futures Commission Issues Warning to Virtual Asset Trading Platforms

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On August 7, 2023, the Securities and Futures Commission of Hong Kong (SFC) issued a warning to virtual asset trading platforms (VATPs) engaging in "improper practices" under the SFC's new regulatory regime for VATPs. In its statement, the SFC specifically called attention to the potential legal and regulatory consequences associated with false license application claims, established entity non-licensing, and the impacts of current VATP noncompliance on respective future license applications.

As discussed in a previous Non-Fungible Insights post, Hong Kong Launches New Regulatory Regime for Virtual Asset Trading Platform Operations, under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), all VATPs that operate a virtual asset exchange in Hong Kong or actively market their services to Hong Kong investors must be licensed by the SFC. The AMLO's transitional arrangements allow VATPs that provided a virtual asset service in Hong Kong prior to June 1, 2023, to continue providing such services in Hong Kong until May 31, 2024, without being in breach of the AMLO's licensing requirements.

## FALSE APPLICATION CLAIMS AND ESTABLISHED ENTITY NON-LICENSING

The SFC began its statement with a reminder directed to unlicensed VATPs making misleading assurances through false claims they have submitted license applications to the SFC, that "[i]t is an offence for any person to make a fraudulent or reckless misrepresentation for the purpose of inducing another person to trade in virtual assets." The statement followed with another reminder that, like new entities created in anticipation of the transitional arrangements, established virtual asset services providers of unlicensed VATPs "will also need to apply for SFC licenses or they should proceed to close their business in Hong Kong."

## NONCOMPLIANCE AND LICENSE APPLICATIONS

The majority of the SFC's statement warned VATPs of the potential impact of current noncompliance with applicable legal and regulatory requirements, particularly under the transitional arrangements, on future license applications. Citing activities such as "launch[ing] certain virtual assets for trading by retail clients, trading services in virtual asset derivatives, and arrangements involving virtual assets such as virtual asset 'deposits', 'savings' or 'earnings'" disallowed under the new regime, the SFC wrote, "These non-compliant activities may raise concerns about the VATPs' intention to comply with the SFC's legal and regulatory requirements and fitness and properness to be licensed, amongst other issues."

In the context of past noncompliant activities, the SFC will consider whether such activities could have "reasonably" been avoided in anticipation of the new regime and will look down upon noncompliant activities that result in unwinding client transactions or withdrawing virtual assets when such unwinding or withdrawal could have reasonably been avoided in anticipation of the new regime. As part of the VATP license application assessment process, the SFC will also consider whether VATPs demonstrate a "genuine" interest in reversing previous noncompliance, such as by timely and orderly unwinding of impermissible transactions.

### IMPLICATIONS

Virtual assets will likely be subject to greater scrutiny and regulatory enforcement in the near future as the Hong Kong Government continues exercising its October 31, 2022 policy to develop virtual assets in the region. To comply with the new regulatory regime, new and existing entities alike should consider submitting a license application to the SFC through WINGS.

Winston & Strawn's multijurisdictional Digital Assets & Blockchain Technology Group will continue to monitor developments and provide friends of the firm with updates as they become available. Please contact your Winston relationship partner to discuss regulations and licensing requirements in Hong Kong.

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