

SFC Circular - Circular on transitional arrangements of the new licensing regime for virtual asset trading platforms

1. The new licensing regime for centralised virtual asset trading platforms (VATPs) under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615) (AMLO) will come into effect on 1 June 2023. Under the new regime, all VATPs carrying on a business of operating a virtual asset exchange (VA service) in Hong Kong or actively marketing their services to Hong Kong investors will need to be licensed by the Securities and Futures Commission (SFC).

2. The SFC issues this circular to set out the transitional arrangements of the new licensing regime under the AMLO.

3. The transitional arrangements discussed in this circular apply only to VATPs providing trading services in non-security tokens. There is no transitional arrangement for compliance with the Securities and Futures Ordinance (SFO). VATPs which intend to provide trading services in security tokens will be subject to the securities laws of Hong Kong and should commence their businesses in providing trading in security tokens only upon obtaining the relevant licence under the SFO.

Eligibility for transitional arrangements

4. The transitional arrangements (ie, a non-contravention arrangement and a deeming arrangement) aim to provide reasonably sufficient time for VATPs which are providing a VA service in Hong Kong before 1 June 2023 and which are prepared to comply with the SFC's standards to apply for a licence and to review and revise their systems and controls to comply with the applicable legal and regulatory requirements.

5. Those who do not plan to apply for a licence should proceed to an orderly closure. The SFC expects them to cease any active marketing of their services to Hong Kong investors.

VATPs operating in Hong Kong before 1 June 2023

6. VATPs which are providing a VA service with meaningful and substantial presence (ie, carrying on a genuine business with genuine presence) in Hong Kong before 1

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June 2023 (pre-existing VATPs) may continue to provide the VA service in Hong Kong from 1 June 2023 to 31 May 2024 (ie, within the first 12 months from 1 June 2023) without being in breach of the licensing requirements under the AMLO by virtue of the non-contravention arrangement.

7. To be eligible for the transitional arrangements, a VATP must have already been providing a VA service in Hong Kong before 1 June 2023. The factors that the SFC will consider in assessing whether a VATP is operating and carrying on a genuine business with a genuine presence in Hong Kong before 1 June 2023 include the following:

- a) whether it is incorporated in Hong Kong;
- b) whether it has a physical office in Hong Kong;
- c) whether its Hong Kong staff exercises central management and control over the VATP;
- d) whether its key personnel (eg, those responsible for the operation of the trading system) are based in Hong Kong;
- e) whether the VATP's operation is live with independent clients and genuine trading volume in Hong Kong; and
- f) whether there are other factors (eg, in relation to the VATP's trading system set-up, trading arrangements and organisational structure) which can support that the VATP is operating in Hong Kong before 1 June 2023.

8. The mere setting up of a company in Hong Kong or only having "shell" operations in Hong Kong would not suffice.

Individuals performing a regulated function for pre-existing VATPs

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9. Individuals may perform a regulated function in Hong Kong for pre-existing VATPs from 1 June 2023 to 31 May 2024 (ie, within the first 12 months from 1 June 2023) without being in breach of the licensing requirements under the AMLO by virtue of the non-contravention arrangement.

VATPs not operating in Hong Kong before 1 June 2023

10. VATPs which were not operating in Hong Kong before 1 June 2023 are not eligible for the transitional arrangements. They should not commence any VATP business activities in Hong Kong, or actively market any VA service to Hong Kong investors, until they are licensed by the SFC. The carrying on of any unlicensed activity is a criminal offence.

Individuals performing a regulated function for VATPs which were not operating in Hong Kong before 1 June 2023

11. Individuals who perform, or hold themselves out as performing, a regulated function for a VATP which was not operating in Hong Kong before 1 June 2023 are not eligible for the non-contravention arrangement. In addition to taking enforcement action against the VATP for carrying on unlicensed activities, individuals performing, or holding themselves out as performing, a regulated function for the VATP would also be carrying on unlicensed activities, which is a criminal offence.

Deeming arrangement

Pre-existing VATPs

12. A pre-existing VATP may be qualified for the deeming arrangement under the AMLO and can be deemed to be licensed from 1 June 2024 to conduct a business of providing a VA service pending the final determination of its licence application if it can meet the following deeming conditions:

- a) It submits a fully completed online licence application to the SFC via WINGS

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between 1 June 2023 and 29 February 2024 (ie, within the first nine months from 1 June 2023) ;

b) It confirms in the licence application that:

i. it has been providing a VA service in Hong Kong immediately before 1 June 2023;

ii. it will, on being deemed to be licensed on 1 June 2024, comply with the regulatory requirements applicable to a licensed VATP; and

iii. it will, on being deemed to be licensed on 1 June 2024, have arrangements in place to ensure it complies with the regulatory requirements applicable to a licensed VATP;

c) It could prove in its licence application to the SFC's satisfaction that:

i. it has been providing a VA service in Hong Kong immediately before 1 June 2023; and

ii. it has a reasonable prospect of successfully showing that it is capable of complying with the regulatory requirements applicable to a licensed VATP; and

d) The SFC has acknowledged receipt in writing that it has received the licence application.

13. Upon a review of the licence application and all the information available to the SFC, if the SFC considers that the VATP licence applicant does not meet any one of the above deeming conditions, the SFC may issue a notice to the VATP (no-deeming notice) to inform the VATP that the deeming arrangement will not apply to it. While the licence application submitted pursuant to section 53ZRK of the AMLO will then be subject to a deemed withdrawal procedure, the VATP must still proceed to close down its business by 31 May 2024 or by the expiry of the three months beginning on the day

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of the issuance of the notice (whichever is later) irrespective of whether it has objected to the deemed withdrawal of its licence application. Its staff members (including proposed licensed individuals as referred to in paragraph 15 below) should also stop performing, or holding himself or herself out as performing, any regulated function for the VATP unless these acts are done solely for the closing down of the VATP's business.

14. If the SFC considers that the pre-existing VATP meets the deeming conditions, the VATP will automatically be deemed to be licensed from 1 June 2024 until its licence application is approved, withdrawn or refused (whichever is earlier).

Proposed licensed individuals of pre-existing VATPs

15. A licensed individual who applies to be a licensed representative (LR) and/or a responsible officer (RO) of a pre-existing VATP (the principal) (a proposed licensed individual) may be qualified for the deeming arrangement under the AMLO and can be deemed to be licensed from 1 June 2024 to perform a regulated function for the principal if he or she can meet the following deeming conditions:

a) To be eligible for making an LR application, the proposed licensed individual must be performing a regulated function in Hong Kong for the principal at the time of submission of his or her application;

b) To be eligible for making an RO application, the proposed licensed individual:

i. must have been performing a regulated function in Hong Kong for a VATP (operating in Hong Kong or elsewhere) immediately before 1 June 2023; and

ii. must be performing a regulated function in Hong Kong for the principal at the time of submission of his or her application. The principal does not necessarily have to be the same VATP for which he or she was performing a function before 1

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June 2023;

c) He or she submits a fully completed online licence application to provide a VA service on behalf of the principal in connection with the principal's licence application to the SFC via WINGS between 1 June 2023 and 29 February 2024 (ie, within the first nine months from 1 June 2023);

d) For an LR application, the proposed licensed individual confirms in his or her licence application that:

i. he or she is performing a regulated function in Hong Kong for the principal at the time of submission of his or her application; and

ii. he or she will, on being deemed to be licensed on 1 June 2024, comply with the regulatory requirements applicable to an LR of a licensed VATP;

e) For an RO application, the proposed licensed individual confirms in his or her licence application that:

i. he or she has been performing a regulated function in Hong Kong for a VATP (operating in Hong Kong or elsewhere) immediately before 1 June 2023;

ii. he or she is performing a regulated function in Hong Kong for the principal at the time of submission of his or her application; and

iii. he or she will, on being deemed to be licensed on 1 June 2024, comply with the regulatory requirements applicable to an LR and an RO of a licensed VATP;

f) For an LR application, the proposed licensed individual proves in the licence application to the SFC's satisfaction that:

i. he or she is performing a regulated function in Hong Kong for the principal at the time of submission of his or her application; and

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ii. he or she has a reasonable prospect of successfully showing that he or she is capable of complying with the regulatory requirements applicable to an LR of a licensed VATP;

g) For an RO application, the proposed licensed individual proves in the licence application to the SFC's satisfaction that:

i. he or she has been performing a regulated function in Hong Kong for a VATP (operating in Hong Kong or elsewhere) immediately before 1 June 2023;

ii. he or she is performing a regulated function in Hong Kong for the principal at the time of submission of his or her application; and

iii. he or she has a reasonable prospect of successfully showing that he or she is capable of complying with the regulatory requirements applicable to an LR and an RO of a licensed VATP;

h) The SFC has acknowledged receipt in writing that it has received his or her licence application; and

i) The SFC has not issued a no-deeming notice to the principal and the principal is deemed to be licensed.

16. Upon a review of the licence application and all the information available to the SFC, if the SFC considers that the proposed licensed individual does not meet any one of the above deeming conditions, the SFC may issue a notice to notify the proposed licensed individual that the deeming arrangement will not apply to him or her and the licence application will be subject to a deemed withdrawal procedure. If the SFC considers that the proposed licensed individual meets the deeming conditions, the proposed licensed individual will automatically be deemed to be licensed from 1 June 2024 until his or her licence application is approved, withdrawn or refused, or the individual ceases to act for or on behalf of the principal, or the principal's licence application is approved, withdrawn or refused (whichever is earlier).

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17. Upon a pre-existing VATP and its proposed ROs and LRs being deemed to be licensed, the provisions of the AMLO apply as if each of them were persons licensed under the AMLO. This means that they will be subject to the full scope of the SFC's supervisory, disciplinary, intervention and other applicable powers. The pre-existing VATP as well as its ROs and LRs should comply with all applicable legal and regulatory requirements under the AMLO (including the Guidelines for Virtual Asset Trading Platform Operators (VATP Guidelines)) as if they were formally licensed (including but not limited to the financial resources and soundness requirements under Part VI of the VATP Guidelines). The SFC will not hesitate to take appropriate actions against any non-compliance.

18. Please see the Appendix attached for the timeline of the transitional arrangements.

Licence applications of pre-existing VATPs for the deeming arrangement

19. Pre-existing VATPs should be aware of the following points regarding their licence applications which are relevant to whether they can be qualified for the deeming arrangement.

Timing of submitting licence applications

20. A licence application submitted after 29 February 2024 will not qualify for the deeming arrangement, and the SFC has no power to grant an extension of the statutory deadline. For such cases, the pre-existing VATP must proceed to close down its business by 31 May 2024. It can only resume its business activities in Hong Kong, or actively market any VA service to Hong Kong investors when it is licensed by the SFC.

21. As part of the existing licence application process that applies to all licence applicants, the SFC will raise requisitions as appropriate. If the application is incomplete or any fundamental issue with the application is revealed during the requisition process, the SFC may consider returning the application where the

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fundamental issue can be resolved, instead of issuing a no-deeming notice to the applicant on the basis that the VATP licence applicant cannot show that it is capable of complying with the regulatory requirements applicable to a licensed VATP due to the fundamental issue. This would allow the applicant to resolve the fundamental issue before submitting a new application. However, this approach may not be practically feasible for applications submitted close to the 29 February 2024 deadline. Where an application is submitted past the deadline of 29 February 2024 due to the time needed in resolving the fundamental issue, the application would not qualify for the deeming arrangement. Hence, pre-existing VATPs should endeavour to submit their applications earlier and in ample time before the deadline of 29 February 2024.

Information to be contained in licence applications

22. As a pre-requisite condition for the deeming arrangement, pre-existing VATPs should demonstrate in their licence applications that they have a reasonable prospect of successfully showing that they are capable of complying with all applicable legal and regulatory requirements. For this purpose, a pre-existing VATP's licence application should meet the following requirements and include the following information and documents:

Arrangements in place to comply with regulatory requirements

23. A pre-existing VATP is required to provide all the necessary information and documents in its licence application, including the VATP's policies and procedures and the external assessment report, to demonstrate how it would step up its internal controls and systems so as to meet all applicable regulatory requirements by 1 June 2024.

24. For this purpose, the VATP's policies and procedures should cover (and the external assessment report should cover the design effectiveness of) the pre-existing VATP's proposed structure, governance, operations, systems and controls, with a focus on key areas such as governance and staffing, token admission, custody of virtual assets, KYC, AML/CFT, market surveillance, risk management and

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cybersecurity. The assessor should review and assess whether the VATP's policies and procedures are clearly written and in compliance with the applicable legal and regulatory requirements, particularly the VATP Guidelines and the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers).

25. Details of the selection criteria on the external assessor and the scope of the external assessment reports are set out in FAQs on the SFC's website.

RO applications

26. At the time of submitting its licence application which should not be later than 29 February 2024, a pre-existing VATP should meet the following minimum requirements in relation to its proposed ROs. Otherwise, the SFC may issue a no-deeming notice to the pre-existing VATP on the basis that it cannot show that it can comply with the regulatory requirements on ROs:

a) At least two RO applications must be submitted together with the VATP licence application to demonstrate that the pre-existing VATP can meet the minimum of two ROs requirement.

b) At least two proposed ROs (one of them must be a director for supervising the business of the VATP of providing a VA service) must be on board at the time of submitting the VATP licence application and they should have already complied with all the RO competence requirements, including the requirement of passing local regulatory framework papers (LRP requirement) as set out in the VATP Guidelines unless any exemption applies. However, if the proposed RO(s) are unable to comply with the LRP requirement by the time when the VATP submits the licence application, the VATP should demonstrate to the SFC's satisfaction that the proposed RO(s) will be able to comply with the LRP requirement by 29 February 2024.

c) At least one RO (out of the proposed ROs as mentioned in paragraph 26b above) is required to be an onshore RO (onshore RO) residing in Hong Kong. It

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should be noted, however, that in order for an RO to be eligible for the deeming arrangement, the RO must be performing a regulated function for the VATP in Hong Kong at the time of its application.

27. For contingency purposes, a pre-existing VATP is advised to onboard more than two proposed ROs (including onshore ROs) who will have complied with all the RO competence requirements on or before 1 June 2024 to prepare for any possible situations (for example, resignation of a proposed RO) which would directly affect the VATPs' capacity to meet the above minimum requirements on ROs, and in turn, the eligibility requirements for the deeming arrangement. Given the nature of the business activities of a VATP, the SFC does not expect the scale of business operations of VATPs to be small and VATPs would likely have more ROs (including onshore ROs) than the minimum requirement.

28. For a pre-existing VATP whose proposed ROs have not been performing a regulated function in Hong Kong for a VATP before 1 June 2023 and therefore the proposed ROs are not qualified for the deeming arrangement, it is advised to submit its VATP licence application (together with its RO applications) as early as possible. This would allow the SFC sufficient time to assess and grant full licences to the proposed ROs by 1 June 2024.

LR applications

29. Non-RO LR applications do not have to be submitted together with the pre-existing VATP's licence application. However, these applications must be submitted before 29 February 2024 if the proposed LRs would like to be qualified for the deeming arrangement.

Dual licences

31. Given that the terms and features of virtual assets may evolve over time, a virtual asset's classification may change from a non-security token to a security token (or vice versa). To avoid contravening any of the licensing regimes and ensure business

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continuity, it would be appropriate for VATPs (together with their proposed ROs and LRs) to apply for approvals under both the SFO and the AMLO and become dually-licensed.

32. In this regard, pre-existing VATPs should also submit a completed licence application (with RO applications) for a licence to carry out a business of Types 1 and 7 regulated activities under the SFO together with its application for a licence to carry out a business of providing a VA service under the AMLO.

33. To streamline the application process, the SFC has put in place the following arrangements:

a) Applicants for licences under both the existing SFO regime and the new AMLO regime only need to submit a single consolidated application online and indicate that they are applying for both licences simultaneously.

b) A dually-licensed VATP is required to have at least two ROs licensed under the SFO and the AMLO (which can be satisfied by having two ROs dually-licensed under both the SFO and the AMLO). For proposed ROs who mainly have virtual asset industry experience or securities-related experience, the SFC will adopt a pragmatic approach, as appropriate, in assessing their relevant industry experience for their dual licence applications. Details are in FAQs on the SFC's website.

34. VATPs which have questions on the transitional arrangements or this circular are encouraged to discuss with the Fintech Unit of the SFC by sending the enquiries to vatp-licensing@sfc.hk.

中文版本

有關專為虛擬資產交易平台而設的全新發牌制度的過渡安排的通函

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1. 《打擊洗錢及恐怖分子資金籌集條例》（第615章）（《打擊洗錢條例》）下專為中央虛擬資產交易平台（虛擬資產交易平台）而設的全新發牌制度將於**2023年6月1日**生效。在新的制度下，所有在香港經營虛擬資產交易所業務（虛擬資產服務）或向香港投資者積極推廣其服務的虛擬資產交易平台，將需獲證券及期貨事務監察委員會（證監會）發牌。
2. 證監會發出本通函，是為了列出《打擊洗錢條例》下新的發牌制度的過渡安排。
3. 本通函所載的過渡安排僅適用於提供非證券型代幣交易服務的虛擬資產交易平台。至於在遵守《證券及期貨條例》方面，則並無任何過渡安排。有意提供證券型代幣交易服務的虛擬資產交易平台將須受到香港的證券法例所規限，並僅應根據《證券及期貨條例》取得相關牌照後，方可展開其提供證券型代幣交易的業務。

參與過渡安排的資格

4. 過渡安排（即不違反安排及當作為獲發牌的安排）旨在為於**2023年6月1日**前正在香港提供虛擬資產服務，且已準備好遵守證監會的準則的虛擬資產交易平台，提供合理足夠的時間，以便它們申領牌照及檢視並修訂其系統與監控措施的虛擬資產交易平台，從而符合適用的法律及監管規定。
5. 無意申領牌照的虛擬資產交易平台應著手以有序方式結束業務。證監會預期它們會停止向香港投資者積極地推廣其服務。

於**2023年6月1日**前在香港營運的虛擬資產交易平台

6. 於**2023年6月1日**前正在香港提供虛擬資產服務並設有具意義且實質的業務（即經營真正的業務並設有真正的業務據點）的虛擬資產交易平台（原有虛擬資產交易平台），可在**2023年6月1日**至**2024年5月31日**期間內（即由**2023年6月1日**起計首**12**個月內），依據不違反安排繼續於香港提供虛擬資產服務，而不會違反《打擊洗錢條例》下的發牌規定。

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7. 虛擬資產交易平台必須於2023年6月1日前已在香港提供虛擬資產服務，方合資格參與過渡安排。在評估某虛擬資產交易平台是否於2023年6月1日前正在香港營運及經營真正的業務並設有真正的業務據點時，證監會將會考慮下列因素：

- a) 該虛擬資產交易平台是否於香港成立為法團；
- b) 該虛擬資產交易平台於香港是否設有實體辦公室；
- c) 該虛擬資產交易平台的香港員工對於該虛擬資產交易平台是否具有中央管理及控制權；
- d) 該虛擬資產交易平台的關鍵人員（例如負責交易系統運作的人員）是否駐於香港；
- e) 該虛擬資產交易平台的運作是否已投入服務，並於香港擁有獨立客戶及真正的成交量；及
- f) 是否有可證明該虛擬資產交易平台於2023年6月1日前正在香港營運的其他因素（例如就該虛擬資產交易平台交易系統設立、交易安排及組織架構而言）。

8. 單純在香港設立公司或在香港只有“空殼”業務並不足夠。

為原有虛擬資產交易平台執行受規管職能的個人

9. 個人可在2023年6月1日至2024年5月31日期間內（即由2023年6月1日起計首12個月內），依據不違反安排在香港為原有虛擬資產交易平台執行受規管職能，而不會違反《打擊洗錢條例》下的發牌規定。

於2023年6月1日前並非在香港營運的虛擬資產交易平台

10. 於2023年6月1日前並非在香港營運的虛擬資產交易平台並不合資格參與過渡安

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排。在獲證監會發牌前，它們不得在香港開展任何虛擬資產交易平台業務活動或向香港投資者積極推廣任何虛擬資產服務。進行任何無牌活動乃屬刑事罪行。

為並非於2023年6月1日前在香港營運的虛擬資產交易平台執行受規管職能的個人

11. 為並非於2023年6月1日前在香港營運的虛擬資產交易平台執行，或顯示自己為並非於2023年6月1日前在香港營運的虛擬資產交易平台執行受規管職能的個人，並不符合資格參與不違反安排。除了對進行無牌活動的虛擬資產交易平台會被採取執法行動外，凡個人為上述的虛擬資產交易平台執行或顯示自己為上述的虛擬資產交易平台執行受規管職能，亦屬於進行無牌活動，屬刑事罪行。

當作為獲發牌的安排

原有虛擬資產交易平台

12. 原有虛擬資產交易平台如符合下列當作為獲發牌的條件，可能合資格參與《打擊洗錢條例》下的當作為獲發牌的安排，以及在其牌照申請有待最終決定期間，可由2024年6月1日起被當作為獲發牌從事提供虛擬資產服務的業務：

a) 該虛擬資產交易平台在2023年6月1日至2024年2月29日期間內（即由2023年6月1日起計首九個月內），透過 WINGS在網上向證監會提交完全填妥的牌照申請；

b) 該虛擬資產交易平台在牌照申請中確認：

i. 其於緊接2023年6月1日前正在香港提供虛擬資產服務；

ii. 其將於2024年6月1日被當作為獲發牌時遵守適用於持牌虛擬資產交易平台的規管性規定；及

iii. 其將於2024年6月1日被當作為獲發牌時便已作出安排，確保其遵守適用於持

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牌虛擬資產交易平台的規管性規定；

c) 該虛擬資產交易平台可在其牌照申請中證明並使證監會信納：

i. 其於緊接2023年6月1日前正在香港提供虛擬資產服務；及

ii. 其有合理機會成功地證明其有能力遵守適用於持牌虛擬資產交易平台的規管性規定；及

d) 證監會已藉書面確認收到有關牌照申請。

13. 在審閱牌照申請及所有證監會可得的資料後，若證監會認為該虛擬資產交易平台牌照申請人並不符合上述任何一項當作為獲發牌的條件，證監會可向有關虛擬資產交易平台發出通知（不當作為獲發牌的通知），告知後者當作為獲發牌的安排將不會適用於該平台。儘管根據《打擊洗錢條例》第53ZRK條提交的牌照申請將受限於當作撤回程序，但有關虛擬資產交易平台仍必須著手於2024年5月31日或之前或在該通知發出當日起計三個月屆滿時或之前（以較遲者為準），結束其業務，而不論其是否已就當作撤回其牌照申請提出反對。其職員（包括下文第15段所提及的擬出任的持牌個人）亦應停止為虛擬資產交易平台執行或顯示自己為虛擬資產交易平台執行任何受規管職能，除非作出該等作為，純粹是為了結束有關虛擬資產交易平台的業務。

14. 證監會如認為原有虛擬資產交易平台符合當作為獲發牌的條件，有關虛擬資產交易平台將由2024年6月1日起自動被當作為獲發牌，直至其牌照申請獲批准、撤回或拒絕（以較早者為準）為止。

原有虛擬資產交易平台的擬出任的持牌個人

15. 申請成為原有虛擬資產交易平台（主事人）的持牌代表及／或負責人員的持牌個人（擬出任的持牌個人）如符合以下當作獲發牌的條件，便可能符合資格參與《打擊洗錢條例》下當作為獲發牌的安排，及可由2024年6月1日起被當作獲發牌，以為主事

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人執行受規管職能：

a) 如要符合資格申請成為持牌代表，擬出任的持牌個人必須在提交其申請時正於香港為主事人執行受規管職能；

b) 如要符合資格申請成為負責人員，擬出任的持牌個人：

i. 必須於緊接2023年6月1日前正於香港為某虛擬資產交易平台（不論是於香港或其他地方營運）執行受規管職能；及

ii. 必須在提交其申請時正於香港為主事人執行受規管職能。該主事人不必為該個人於2023年6月1日前為其執行職能的同一虛擬資產交易平台；

c) 該個人在2023年6月1日至2024年2月29日期間（即由2023年6月1日起計九個月內）在與主事人的牌照申請相關的情況下，透過WINGS在網上向證監會就代表該主事人提供虛擬資產服務提交完全填妥的牌照申請；

d) 就持牌代表的申請而言，擬出任的持牌個人在其牌照申請中確認：

i. 該個人在提交其申請時正於香港為主事人執行受規管職能；及

ii. 該個人將於2024年6月1日被當作獲發牌時，遵守適用於持牌虛擬資產交易平台的持牌代表的規管性規定；

e) 就負責人員的申請而言，擬出任的持牌個人在其牌照申請中確認：

i. 該個人於緊接2023年6月1日前正於香港為某虛擬資產交易平台（不論是於香港或其他地方營運）執行受規管職能；

ii. 該個人於提交其申請時正於香港為主事人執行受規管職能；及

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iii. 該個人將於2024年6月1日被當作獲發牌時，遵守適用於持牌虛擬資產交易平台的持牌代表及負責人員的規管性規定；

f) 就持牌代表的申請而言，擬出任的持牌個人在牌照申請中證明並獲證監會信納：

i. 該個人在提交其申請時正於香港為主事人執行受規管職能；及

ii. 該個人有合理機會成功地證明，他或她有能力遵守適用於持牌虛擬資產交易平台的持牌代表的規管性規定；

g) 就負責人員的申請而言，擬出任的持牌個人在牌照申請中證明並獲證監會信納：

i. 該個人於緊接2023年6月1日前正於香港為某虛擬資產交易平台（不論是於香港或其他地方營運）執行受規管職能；

ii. 該個人在提交其申請時正於香港為主事人執行受規管職能；及

iii. 該個人有合理機會成功地證明，他或她有能力遵守適用於持牌虛擬資產交易平台的持牌代表及負責人員的規管性規定；

h) 證監會已藉書面確認收到其牌照申請；及

i) 證監會沒有向主事人發出不當作為獲發牌的通知，而該主事人被當作為獲發牌。

16. 在審閱牌照申請及證監會取得的所有資料後，若證監會認為擬出任的持牌個人並不符合以上任何一項當作獲發牌的條件，證監會可發出通知，告知該擬出任的持牌個人當作為獲發牌的安排將不會適用於他或她，及有關牌照申請將受限於當作撤回程序。證監會如認為擬出任的持牌個人符合當作獲發牌的條件，該個人將由2024年6月1

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日起自動被當作獲發牌，直至其牌照申請獲批准、撤回或拒絕，或該個人停止為主事人或代表該主事人行事，或該主事人的牌照申請獲批准、撤回或拒絕（以較早者為準）為止。

17. 原有虛擬資產交易平台及其擬出任的負責人員和持牌代表在被當作獲發牌後，《打擊洗錢條例》的條文即告適用，猶如他們各自是根據《打擊洗錢條例》獲發牌的人士般。這意味著，他們將須受到證監會的監管權、紀律懲處權、干預權及其他適用的權力所全面約束。原有虛擬資產交易平台，以及其負責人員及持牌代表應遵守《打擊洗錢條例》下所有適用的法律及監管規定（包括《適用於虛擬資產交易平台營運者的指引》（《虛擬資產交易平台指引》）），猶如他們獲正式發牌般，包括但不限於《虛擬資產交易平台指引》第VI部的財政資源及穩健性規定。證監會將毫不猶豫地對任何違規行為採取適當的行動。

18. 有關過渡安排的時間表，請參閱附錄。

原有虛擬資產交易平台就當作為獲發牌的安排提出的牌照申請

19. 原有虛擬資產交易平台應注意與其牌照申請有關的以下各點，因後者關乎他們是否符合資格參與當作為獲發牌的安排。

提交牌照申請的時間

20. 凡於2024年2月29日後提交的牌照申請，將不符合資格參與當作為獲發牌的安排，而證監會亦無權延長有關法定限期。在此情況下，原有虛擬資產交易平台必須著手於2024年5月31日或之前結束其業務，及只可在獲得證監會發牌的情況下，恢復其在香港的業務活動或積極地向香港投資者推廣任何虛擬資產服務。

21. 在現行適用於所有牌照申請人的牌照申請程序中，證監會將在適當情況下提出要求。如果申請不完整或證監會在提出要求過程中發現該申請出現任何根本問題，在有關根本問題可獲得解決的情況下，證監會可考慮退回該申請，而不是以該虛擬資產交

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易平台的牌照申請人因該根本問題而無法證明它有能力和遵守適用於持牌虛擬資產交易平台的規管性規定為由，向該申請人發出不當作為獲發牌的通知。這將容許申請人在提交新的申請前解決根本問題。然而，如果有關申請是於接近2024年2月29日的限期前提交，上述做法可能並不切實可行。如果申請人因需時解決根本問題而於2024年2月29日後提交申請，則該申請將不符合資格參與當作為獲發牌的安排。因此，原有虛擬資產交易平台應準備充足的時間，盡力於2024年2月29日的限期前及早提交申請。

須在牌照申請內載列的資料

22. 作為當作為獲發牌的安排的一項先決條件，原有虛擬資產交易平台應在其牌照申請中顯示其有合理機會成功地證明其有能力遵守所有適用的法律及監管規定。為此，原有虛擬資產交易平台的牌照申請應符合下列規定，並包括下列資料及文件：

為符合規管性規定而設立的安排

23. 原有虛擬資產交易平台須在其牌照申請中提供一切所需資料及文件（包括虛擬資產交易平台的政策及程序和外部評估報告），以顯示其將會於2024年6月1日或之前加強其內部監控措施及系統，藉此符合所有適用的規管性規定。

24. 為此，虛擬資產交易平台的政策及程序應涵蓋原有虛擬資產交易平台建議的架構、管治、運作、系統及監控措施（而外部評估報告則應涵蓋有關架構、管治、運作、系統及監控措施的設計效能），當中應聚焦於管治和人手編制、納入代幣、保管虛擬資產、認識你的客戶、打擊洗錢／恐怖分子資金籌集、市場監察、風險管理及網絡保安等主要範疇。評估專家應檢視並評估虛擬資產交易平台的政策和程序是否清楚地以書面記載下來，以及是否符合適用的法律及監管規定，尤其是《虛擬資產交易平台指引》及《打擊洗錢及恐怖分子資金籌集指引（適用於持牌法團及獲證監會發牌的虛擬資產服務提供者）》。

25. 有關外部評估專家揀選準則及外部評估報告範圍的詳情載於證監會網站上的《常見問題》內。

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負責人員的申請

26. 原有虛擬資產交易平台在提交其牌照申請時（不應遲於2024年2月29日），應符合下列與其擬出任的負責人員有關的基本規定；否則，證監會可能會基於原有虛擬資產交易平台未能證明其能夠遵守有關負責人員的規管性規定，向該平台發出不當作為獲發牌的通知：

a) 必須隨同虛擬資產交易平台的牌照申請提交至少兩份負責人員的申請，以顯示原有虛擬資產交易平台能夠符合至少有兩名負責人員的規定。

b) 在提交虛擬資產交易平台的牌照申請時，必須有至少兩名擬出任的負責人員（其中一人必須為負責監督虛擬資產交易平台在提供虛擬資產服務方面的業務的董事）已上任，而除非任何豁免適用，否則他們應已符合《虛擬資產交易平台指引》所載列的全部負責人員勝任能力規定（包括通過本地監管架構考試的規定（本地監管架構考試的規定））。然而，若擬出任的負責人員在虛擬資產交易平台提交牌照申請時當時或之前未能遵守本地監管架構考試的規定，該虛擬資產交易平台則須顯示並獲證監會信納擬出任的負責人員將能夠於2024年2月29日或之前遵守本地監管架構考試的規定。

c) 至少一名負責人員（屬上文第26b段所述的其中一名擬出任的負責人員）須為居於香港的非離岸負責人員（非離岸負責人員）。然而，應注意的是，負責人員如要符合資格參與當作為獲發牌的安排，必須在作出其申請時於香港為該虛擬資產交易平台執行受規管職能。

27. 為了作出應變，我們建議原有虛擬資產交易平台應有多於兩名將於2024年6月1日或之前符合全部負責人員勝任能力規定的擬出任的負責人員（包括非離岸負責人員）在任，以為任何將會對該虛擬資產交易平台在符合上述有關負責人員的基本規定以至參與當作為獲發牌的安排的資格規定方面的能力造成直接影響的可能情況（例如，擬出任的負責人員辭任）作好準備。鑑於虛擬資產交易平台的業務活動性質，證監會不預期虛擬資產交易平台的業務營運規模屬小型，而虛擬資產交易平台負責人員（包括

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非離岸負責人員)的數目相當可能多於基本規定。

28. 若原有虛擬資產交易平台的擬出任的負責人員於2023年6月1日前未曾在香港為某虛擬資產交易平台執行受規管職能，以致該擬出任的負責人員不合資格參與當作為獲發牌的安排，則我們建議該平台應盡早提交其虛擬資產交易平台的牌照申請（連同其負責人員的申請），以便證監會於2024年6月1日或之前有足夠時間進行評估和向有關擬出任的負責人員批給正式牌照。

持牌代表的申請

29. 非負責人員的持牌代表的申請無須連同原有虛擬資產交易平台的牌照申請一併提交。然而，擬出任的持牌代表如要符合資格參與當作為獲發牌的安排，有關申請便須於2024年2月29日前提交。

雙重牌照

30. 待新制度實施後，證監會將根據《證券及期貨條例》下的現行發牌制度，對虛擬資產交易平台所進行的證券型代幣交易作出監管，同時亦會根據《打擊洗錢條例》下的制度，對虛擬資產交易平台所進行的非證券型代幣交易作出監管。

31. 鑑於虛擬資產的條款和特點可能隨時間而演變，某一虛擬資產的分類或會由非證券型代幣變為證券型代幣（反之亦然）。為免違反任何發牌制度的規定及確保業務得以持續運作，虛擬資產交易平台（連同其擬出任的負責人員和持牌代表）適宜同時根據《證券及期貨條例》及《打擊洗錢條例》申請批准，以獲雙重發牌。

32. 就此，原有虛擬資產交易平台亦應一併就根據《證券及期貨條例》經營第1類及第7類受規管活動的牌照提交填妥的牌照申請（連同負責人員的申請），以及就根據《打擊洗錢條例》經營提供虛擬資產服務的業務提出牌照申請。

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33. 為了簡化申請程序，證監會已實施以下安排：

a) 申請人如要同時根據《證券及期貨條例》下的現行制度及《打擊洗錢條例》下的新制度申領牌照，只需在網上提交一份綜合申請表格，並註明同時申領該兩項牌照。

b) 獲雙重發牌的虛擬資產交易平台須擁有至少兩名根據《證券及期貨條例》及《打擊洗錢條例》獲發牌的負責人員（有關平台可透過擁有兩名同時根據《證券及期貨條例》和《打擊洗錢條例》獲雙重發牌的負責人員來符合此規定）。若擬出任的負責人員主要擁有虛擬資產方面的行業經驗或證券相關的經驗，證監會在就他們的雙重牌照申請評估其相關行業經驗時，會適當地採取務實的方針。有關詳情載於證監會網站內的《常見問題》。

34. 如虛擬資產交易平台對過渡安排或本通函有任何疑問，我們鼓勵有關平台將查詢發送至 vatp-licensing@sfc.hk，與證監會金融科技組洽商。

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