

Public Consultation on Legislative Proposals to Enhance Anti-Money Laundering and Counter-Terrorist Financing Regulation in Hong Kong - The Bitcoin Association of Hong Kong

31 January 2021

By email: aml-consult@fstb.gov.hk

Dear Sir or Madam,

We are submitting our views on the Legislative Proposal to enhance Anti-Money Laundering and Counter-Terrorist Financing Regulation (the Proposal).

We are [香港比特幣協會 the Bitcoin Association of Hong Kong](#)¹, a community-driven organization founded in 2014 to promote, educate and foster Bitcoin and its technology in Hong Kong. We represent individuals and organizations that use Bitcoin and offer related products and services. Over the years we have organized and co-hosted close to [300 events](#)², including industry conferences, hackathons and fairs.

Since [December 2014](#)³ Bitcoin has been regarded as a virtual commodity, and as such has been subject to regulation by the Customs & Excise Department (C&ED). Bitcoin is [neither regarded as money](#)⁴, nor as a security or futures contract. This is not true for all cryptographic tokens, which may resemble securities, futures, payment vehicles, stored value facilities, debt obligations, customer loyalty programs or other more creative arrangements.

As our members have [pointed out as early as 2018](#)⁵, the definition of a “Virtual Asset” does not make any meaningful distinctions between such mechanisms. In fact, the only common denominator for “Virtual Assets” seems to be the existence of a trading pair to Bitcoin through a “Virtual Assets Service Provider,” commonly referred to in the media as a cryptocurrency exchange.

¹ <https://www.bitcoin.org.hk/about/>

² <https://www.bitcoin.org.hk/meetups/>

³ <http://library.legco.gov.hk:1080/record=b1162178>

⁴ <https://www.hkma.gov.hk/eng/news-and-media/speeches/2018/09/20180921-1/>

⁵ <https://blog.bitcoin.org.hk/sfc-regulates-crypto-exchanges-party-over-in-hong-kong-bc081100863a>

Firstly we believe it is most appropriate to regulate each phenomenon according to its own facts, as is already the case. “Virtual Assets” representing securities and futures are already under the supervisory regime of the SFC, while those constituting currencies or stored value facilities are already under scrutiny from the HKMA, and virtual commodities are regulated by C&ED. We believe it is not helpful to define a token as both a “Virtual Asset” and something else, while placing it under two contradictory regulatory regimes from two departments at the same time.

Under the Proposal a very broad range of activity would suddenly fall under the supervision of the SFC, which we do not think is a suitable arrangement under the legal principles that Hong Kong operates under as well as practical concerns.

More importantly, we believe it is paramount that Bitcoin remains accessible to every Hong Kong resident. Any barrier put in place to restrict the sale or purchase of Bitcoin needs to be reasonable and well justified. Individuals as well as corporates need to be able to use and accept Bitcoin as payment and calculate their tax obligations easily, as is the status quo. There is no justification for why a resident’s interaction with Bitcoin should be fundamentally different to interaction with precious metals, gift cards or foreign currency.

"No foreign exchange control policies shall be applied in the Hong Kong Special Administrative Region. The Hong Kong dollar shall be freely convertible. Markets for foreign exchange, gold, securities, futures and the like shall continue." - Article 112 of the Basic Law

We fear that restricting non-institutional investors from converting their Bitcoin into Hong Kong dollars constitutes capital controls. At a time where ordinary residents and government officials are denied access to basic banking services, we must not further restrict access to tools that reduce dependency on foreign institutions.

According to a [2020 study by Citibank](#)⁶, only about 1.3% of the population (100,000 individuals) qualify for the status of ‘institutional investor.’ Restricting access to Bitcoin to all other Hong Kong residents comes close to a blanket ban on Bitcoin and is without precedent among FATF members.

As such, we strictly oppose the Proposal and its definition of “Virtual Assets.” We suggest that instead of delegating a broad and varied field of contracts to a single department, the HKMA, C&ED and SFC each retain jurisdiction over their own respective fields. Any potential future regulatory loopholes or uncertainties can and should be addressed by the relevant departments.

The Bitcoin Association of Hong Kong

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https://www.citibank.com.hk/english/info/pdf/Citibank_Announces_Results_of_Hong_Kong_Affluent_Study_2019-2020_Eng_final.pdf

Q1) Do you agree that Hong Kong should continue with efforts to strengthen the AML/CTF system having regard to international standards, in keeping with our status as an international financial centre that is safe and clean for doing business?

No, there is serious concern whether the current AML/CTF approach is effective, just, or in compliance with legal principles. We believe the current AML/CTF standards need in-depth overhaul before they can be 'strengthened.'

Q2) Do you agree that a balanced approach should be adopted for the current legislative exercise, complementing the need to have an effective system for tackling ML/TF risks in the VASP and the DPMS sectors in accordance with the FATF Standards, while minimising regulatory burden and compliance costs on the businesses?

No, we do not believe the proposal presents a balanced approach.

Q3) Do you agree with the proposed scope and coverage of the regulated activity of operating a VA exchange?

No, we believe the proposal is too far in scope and does not serve the Hong Kong Special Administrative Region of the People's Republic of China.

Q4) Do you agree with the proposed definition of VA? Other than closed-loop, limited purpose items, are there other digital items that should be excluded from the definition?

No, there is no meaningful distinction between a Virtual Asset and other, existing forms of electronic 'things.'

Q5) Should peer-to-peer VA trading platforms be covered under the licensing regime?

It cannot be done and shouldn't be done.

Q6) Do you agree that only locally incorporated companies may apply for a VASP licence?

There shouldn't be a license of this sort, and it should not be limited to locally incorporated companies or individuals.

Q7) Should other criteria be added to the fit-and-proper test given the nature and risks of VASPs?

No absolutely not.

Q8) Should other regulatory requirements be added to mitigate the risks of VASPs?

Negative Covid-19 test.

Q9) Do you agree that a VASP licence should be open-ended or should it be periodically renewed?

We object to a VASP license regime.

Q10) Do you agree with the exemption arrangement and the 180-day transitional period for application of a VASP licence?

We object to a VASP license regime.

Q11) Do you agree that, for investor protection purpose, persons without a VASP licence should not be allowed to actively market a VA exchange business to the public of Hong Kong?

Bitcoin is not an investment vehicle, and as such it does not make sense to introduce a licensing framework for investment protection purposes.

Q12) Do you agree that the penalty level for carrying out unlicensed VA activities should be sufficiently high to achieve the necessary deterrent effect

We object to punishments for unlicensed VA activities.

Q13) Do you agree with the proposed sanctions, including that it shall be a criminal offence for a person to make a fraudulent or reckless misrepresentation to induce someone to acquire or dispose of a VA?

No we object.

Q14) Do you agree that the Tribunal be expanded to hear appeals from licensed VASPs against future decisions of the SFC?

We do not believe there should be a VASP licensing regime of this form.