

SFC Warns Unlicensed Crypto Exchanges re. Improper Conduct

Hong Kong's Securities and Futures Commission (the **SFC**) has warned unlicensed virtual asset trading platforms (**VATPs**) of the potential legal and regulatory consequences of false claims to have applied for SFC-licensing, and providing prohibited services, such as staking. The SFC's Warning - [Virtual asset trading platforms engaging in improper practices](#) - also warns investors of the risks of trading crypto on unlicensed exchanges which may not comply with its requirements.

The SFC has not yet licensed any crypto exchanges to offer crypto trading services to retail investors under the new licensing regime which took effect on 1 June 2023 under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (the **AMLO**). However, the SFC upgraded the existing licences of OSL Digital Securities Limited (**OSL**)¹ and HashKey Brokerage Services Limited (**HashKey**)² on 3 August 2023, allowing them to expand their licensed crypto trading businesses to retail investors. Both platforms were already licensed under the Securities and Futures Ordinance (**SFO**) to trade crypto for professional investors: the June regulatory changes allowed the SFC to upgrade those licences to enable them to offer trading in "highly liquid" crypto to retail investors, subject to the exchanges' compliance with various additional investor protection measures.

False Claims to Have Applied to the SFC for Licensing

The SFC notes that some unlicensed VATPs operating in Hong Kong claim to have submitted a licensing application to the SFC, when this is not true. It is an offence under section 53ZRG of the AMLO to make a fraudulent or reckless misrepresentation in order to induce an acquisition or disposal of a virtual asset. That offence carries maximum penalties of seven years' imprisonment and a HK\$1 million fine. According to the SFC, false claims to have applied for SFC licensing may mislead the investing public into believing that the crypto exchange complies with the regulatory requirements for licensing, when this is not the case. If the exchange subsequently applies for a licence, the SFC says that it will take any misrepresentation as to the exchange's licensed status into account in determining its fitness and properness to be licensed.

Unlicensed VATPs Operating in Hong Kong under the AMLO's Transitional Arrangements

The transitional arrangements introduced on the commencement of the new AMLO licensing regime for VATPs allow VATPs that had a substantial operating presence in Hong Kong before 1 June 2023 to continue their operations without a licence for the first year of the new regime (i.e. until 31 May 2024). To continue operating beyond that date, exchanges must apply to be licensed no later than 29 February 2024. Exchanges who apply by the deadline

will then be deemed to be licensed from 31 May 2024 until the earlier of the grant, withdrawal or refusal of their application (the **deeming arrangement**). Thus, unlicensed exchanges may be operating in Hong Kong having already applied, or with the intention of applying, for licensing by the February deadline. However, this does not necessarily mean that the exchange will apply for licensing or comply with the SFC's requirements for licensing.

Existing VATPs' Non-compliance with the SFC Requirements

The SFC's deeming arrangement under the transitional arrangements does not automatically apply to platforms operating in Hong Kong before 1 June 2023. If the SFC considers that a platform does not satisfy the relevant legal and regulatory requirements, or does not have a reasonable prospect of demonstrating compliance with those requirements, it will inform the trading platform that the deeming provision will not apply to it.³ The platform must then close down its business by 31 May 2024, or within three months of the date of the SFC notice, whichever is the later.

VATP Activities Breaching SFC Requirements

The SFC also notes that a number of crypto exchanges set up trading operations in Hong Kong ahead of the new licensing regime's implementation in anticipation of the introduction of the transitional arrangements, and announced their intention to apply for SFC licensing. The products and services offered by these exchanges may not however comply with the SFC's requirements for licensing.

The SFC also points to various unlicensed exchanges that have launched products and services that are not allowed under the AMLO regime. Some have apparently offered crypto for retail trading, when this is not permitted until the exchange has been licensed. Others are offering trading services in virtual asset derivatives and offering virtual asset "deposits", "savings" and "earnings", all of which are prohibited under the [Guidelines for Virtual Asset Trading Platform Operators](#).⁴

The SFC warns that in assessing VATPs' licensing applications, it will take into account any previous non-compliant activities that could have been avoided. Specifically, the SFC may take a negative view of non-compliant activities that resulted in the client transactions having to be unwound, or a virtual asset being removed from retail trading, if that could have been avoided. In assessing licensing applications, the SFC will also consider whether platforms genuinely intend to unwind prohibited transactions in an orderly manner.

Reminder to Unlicensed Platforms to Submit Licensing Applications

The SFC reminds unlicensed crypto exchanges that they cannot operate in Hong Kong until they have been licensed by the SFC, unless they can rely on the transitional arrangements for exchanges with a substantive presence in Hong Kong before 1 June 2023. Exchanges operating in Hong Kong under the transitional arrangements which do not apply for licensing by 29th February 2024, will have to close down their Hong Kong operations given that it is an offence to operate a virtual asset trading exchange without being licensed by the SFC.

Investor Warnings

The SFC reminds investors that, with the exception of OSL and HashKey, all crypto exchanges currently operating in Hong Kong are unlicensed. There is therefore no guarantee that these exchanges will apply to the SFC to be licensed, or that they will satisfy the regulatory requirements for licensing. When the SFC licenses a VATP, it will update the [list of virtual asset trading platforms](#) on its website.

[1] OSL. "[OSL Receives SFC License Uplift, Enabling Retail Investors to Trade Bitcoin and Ethereum](#)".

[2] HashKey Group. "[HashKey Exchange Announces Official Uplift of Type 1 and Type 7 Licences, Becoming the First Licensed Exchange for Retail Users in Hong Kong](#)"

[3] Under section 3 of Schedule 3G to the AMLO

[4] The VATP Guidelines prohibit trading virtual asset futures contracts or related derivatives (under paragraph 7.25) and the use of client assets to generate income or returns for clients (under paragraph 7.26(b))

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