



**COUNTRY  
COMPARATIVE  
GUIDES 2023**

# **The Legal 500 Country Comparative Guides**

## **Hong Kong BLOCKCHAIN**

### **Contributor**

Slaughter and May



#### **Vincent Chan**

Partner | [vincent.chan@slaughterandmay.com](mailto:vincent.chan@slaughterandmay.com)

#### **Ariad Porat**

Associate | [ariad.porat@slaughterandmay.com](mailto:ariad.porat@slaughterandmay.com)

#### **Jonathan Hsu**

Associate | [jonathan.hsu@slaughterandmay.com](mailto:jonathan.hsu@slaughterandmay.com)

This country-specific Q&A provides an overview of blockchain laws and regulations applicable in Hong Kong.

For a full list of jurisdictional Q&As visit [legal500.com/guides](https://legal500.com/guides)

## HONG KONG BLOCKCHAIN



### 1. Please provide a high-level overview of the blockchain market in your jurisdiction. In what business or public sectors are you seeing blockchain or other distributed ledger technologies being adopted? What are the key applications of these technologies in your jurisdiction?

Hong Kong has embraced blockchain and distributed ledger technology (“**DLT**”), being listed by the Worldwide Crypto Readiness Report as the most “crypto-ready” jurisdiction in the world in 2022, ranking in the top three in terms of the number of both blockchain start-ups and cryptocurrency ATMs proportional to its population.

In October 2022, the Financial Services and the Treasury Bureau of the Hong Kong Government (“**FSTB**”) published a policy statement (“**FSTB Policy Statement**”) explaining its approach to and vision for the development of a vibrant ecosystem for virtual assets (“**VAs**”) in Hong Kong, illustrating the Hong Kong Government’s proactive approach to embracing future opportunities in the sector. Following the publication of the FSTB Policy Statement, as of February 2023, over 80 VA-related companies have expressed interest in establishing a presence in Hong Kong.

Several major blockchain-focused conferences have taken place in Hong Kong in recent years. The inaugural Hong Kong Web3 Festival 2023, one of the largest VA-focused conferences in Hong Kong’s history, featured more than 300 industry leaders, project founders, investors, regulatory agency representatives and experts, coming together to discuss key market dynamics and trends relating to Web3 technologies.

According to a June 2020 report by the FSTB (“**2020 FSTB Report**”), in 2019 blockchain firms accounted for 39% of the new fintech firms brought into Hong Kong by Invest HK, the Hong Kong Government department responsible for foreign direct investment. Of these new blockchain firms: 45% were enterprise solutions using blockchain technologies; 27% were trading platforms for

digital assets; 14% were involved in custody of digital assets; 9% in trade finance settlement; and 5% in security tokens. Invest HK found that Hong Kong is home to over 800 fintech companies as of May 2023, which represents a significant increase from 230 in 2017 and 600 in 2019.

Fintech and digital assets continue to be areas of particular focus for the Hong Kong Government and the city’s key financial regulators, the Hong Kong Monetary Authority (“**HKMA**”), the Securities and Futures Commission (“**SFC**”) and the Insurance Authority (“**IA**”).

Outside of the finance industry, blockchain has been implemented in various other contexts in Hong Kong, ranging from non-fungible tokens (“**NFTs**”) tokenising artifacts from museum collections to DLT-based auditing and data management for aviation assets.

### 2. To what extent are tokens and virtual assets in use in your jurisdiction? Please mention any notable success stories or failures of applications of these technologies.

VAs and tokens are actively in use in Hong Kong. As noted in the 2020 FSTB Report, of the new blockchain firms brought into Hong Kong by Invest HK in 2019, 27% were trading platforms for digital assets, 14% were involved in custody of digital assets and 5% in security tokens. Previously, Hong Kong has also emerged as a leading Asian, and indeed global, hub for initial coin offerings (“**ICOs**”) (see question 11). Consistent, however, with global trends, ICO activity in Hong Kong has significantly declined since its peak in 2018.

As of 3 October 2023, two firms are licensed by the SFC to operate VA trading platforms under conduct Type 1 (dealing in securities) and Type 7 (automated trading service) licences. OS Digital Securities Limited (“**OSL**”) was approved by the SFC in December 2020 to conduct a VA trading business, while Hash Blockchain Limited (“**HashKey**”), which offers trading of cryptocurrencies

and VAs ranging from Bitcoin and Ether to stablecoins and security tokens, received its license in November 2022. OSL and HashKey both announced on 3 August 2023 that they had received authorisation from the SFC to begin offering services to retail investors under the new licensing regime that came into effect on 1 June 2023 (see question 4).

The issuance by the Hong Kong Government in February 2023 of the world's first tokenised governmental green bond (discussed further at question 3) and the creation by WeBank, a digital-only Chinese bank, of a blockchain-based information verification platform, provide examples of the successful application of blockchain-related technologies in Hong Kong. WeBank was recognised by Forbes' Blockchain 50 2023 list for its innovative use of blockchain technologies. Another notable example is the March 2019 launch by Hong Kong's Chinese Gold & Silver Exchange of GoldZip, a blockchain-powered digital gold certificate trading platform backed by physical gold reserves. Using digital tokens, the platform allows investors to trade in amounts smaller than the current minimum trade on the exchange.

While there have been no widely publicised major failures of the application of token and VA technologies in Hong Kong, the SFC has issued several statements and circulars concerning cryptocurrencies and other VAs, many of which have focused on warning investors of the risks inherent in investing in VAs and of participating in ICOs and securities token offerings ("**STOs**"). In 2018, the SFC ordered Black Cell Technology Limited ("**Black Cell**") to halt its ICO due to concerns regarding regulatory non-compliance. See the responses to questions 9-15 for further details.

Interest in NFTs in Hong Kong can also be seen in the field of art and collectibles. The first NFT art shows were held in the city in 2021 and investor interest has continued. In May 2023, Artifact Labs, a Hong Kong-based NFT company which plans to release NFT collections as a revenue stream for preservation organisations such as museums, raised USD 3.25 million in its seed financing round.

### 3. To what extent has blockchain technology intersected with ESG (Environment, Social and Governance) outcomes or objectives in your jurisdiction?

There is a multitude of new projects and initiatives in Hong Kong exploring the intersection between blockchain technology and ESG, spearheaded by both the public and private sectors.

Green finance is a key area of intersection between blockchain and ESG objectives. In August 2021, the HKMA and the Bank for International Settlements ("**BIS**") Innovation Hub Hong Kong Centre ("**BIS Hub**") announced the launch of Project Genesis 1.0, which explored the tokenisation of green bonds to enable investment in small denominations, combined with real-time tracking of environmental outputs. The project developed two prototype digital platforms to streamline the bond issuance process and improve transparency of the use of proceeds. The platforms combined smart contracts, blockchain, Internet of Things ("**IoT**") and digital assets and allowed retail investors to continuously track coupon payments and the environmental impact of the financed projects. Following the successful conclusion of Project Genesis 1.0, in October 2022, Project Genesis 2.0, which involved developing prototypes for tracking, delivering, and transferring digitised carbon forwards, was also successfully completed.

In February 2023, the Hong Kong Government issued the world's first tokenised governmental green bond. All coupon payment, settlement of trading and redemption are to be conducted through an online tokenisation platform deploying DLT, marking a global milestone in the innovation of green finance and digitalisation of capital markets.

Another area of intersection relates to facilitating compliance with ESG reporting requirements by leveraging blockchain technology's unique features to provide secure platforms for data gathering, recording and evaluation. Diginex (a software-as-a-service provider) offers the DiginexESG platform, which assists users to comply with the Stock Exchange of Hong Kong Limited's ("**HKEX**") ESG Reporting Guidelines, by providing a blockchain-enabled means to streamline ESG data reporting process. In September 2022, Amazon Web Services ("**AWS**") similarly announced that InnoBlock Technology has built TT Green, a specialised ESG data platform, on AWS. The platform utilises blockchain technology to monitor and report standardized ESG data, including data gathered from IoT sensors embedded in smart buildings' devices.

Government-backed discussion forums such as Earth Forum 2023, which provided experts with a platform to discuss how best to leverage fintech to support ESG goals, indicate that we can expect further development and discussion about the intersections of ESG and blockchain in Hong Kong's future — particularly in the context of sustainable finance.

**4. Please outline the principal legislation and the regulators most relevant to the use of blockchain technologies in your jurisdiction. In particular, is there any blockchain-specific legislation or are there any blockchain-specific regulatory frameworks in your jurisdiction, either now or envisaged in the short or mid-term?**

On 1 June 2023, amendments to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) ("**AMLO**") and the SFC's "Guidelines for Virtual Asset Trading Platform Operators" ("**VATP Guidelines**") came into effect, reflecting a major development in Hong Kong's implementation of VA-specific regulation. Aside from this, there are no other blockchain-specific pieces of legislation or regulatory frameworks in Hong Kong. However, blockchain and DLT invariably engage existing legal and regulatory regimes to some extent, and the HKMA has indicated it will follow a "same risk, same regulation" approach in regulating crypto-assets. The SFC has also signalled that it expects to introduce a further licensing regime for stablecoins in 2023/2024.

There are now two VA-specific licensing regimes in Hong Kong, which operate side-by-side. For 'security' tokens, the SFC's licensing regime applies to virtual asset trading platform ("**VATP**") operators offering trading services in at least one 'security' as defined under the Securities and Futures Ordinance (Cap. 571) ("**SFO**"), and permits them to grant access to retail investors subject to additional safeguards (such as requiring tradeable VAs to be "large-cap" and pre-approved by the SFC and ensuring that retail investors have the requisite knowledge of VAs and their associated risks). For non-security tokens, the AMLO regime mandates licensing for VATP operators offering trading services in such tokens (e.g., Bitcoin, Ether and stablecoins). The SFC expects all VATP operators to be dually licensed under both the SFO and AMLO if they operate (or actively market to investors) in Hong Kong. Offering such services in Hong Kong without the required licences is prohibited.

As of 3 October 2023, only two firms — OSL and HashKey — have opted into the SFC's regime and are licensed by the SFC as VATP operators. The new AMLO regime requires other VATP operators to become licensed if they wish to continue to operate (or actively market to investors) in Hong Kong. The transitional period, permitting pre-existing VATP operators to continue offering services provided they have submitted a licence application by 29 February 2024 and do not actively market to Hong Kong investors from 1 June 2023, will come to an end on 31 May 2024. VATPs not

yet operating in Hong Kong before 1 June 2023 must wait until their licence applications are approved before commencing business in Hong Kong or actively marketing their services to Hong Kong investors.

On 29 September 2023, following the publication of the JPX Statements (see question 18 for more detail) and as part of SFC's efforts to disseminate information on VATPs in a clear, transparent and timely manner, the SFC published several lists of VATPs on its website, including: (i) licensed VATP operators (referring to OSL and HashKey, as mentioned above), (ii) VATP operator applicants, (iii) removed VATP operator applicants, (iv) closing-down VATPs, (v) deemed licensed VATPs and (iv) suspicious VATPs.

Licensed firms (whether trading security or non-security tokens) must comply with the new VATP Guidelines which set out requirements relating to, among other things, token due diligence (including the creation of a token admission and review committee), retail investor protection measures (such as measures to compensate clients for potential loss of VAs from storage), client asset custody (such as use of 'cold storage' i.e. offline facilities for client VAs), fitness and properness, financial soundness, supervision and internal controls.

In addition, licensees must comply with statutory anti-money laundering ("**AML**") and counter-terrorist financing ("**CTF**") obligations, such as requirements in relation to customer due diligence and record-keeping, as described in Chapter 12 of the SFC's Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) dated June 2023 (see also question 9). VATPs must also comply with the "Travel Rule", which requires VATPs to gather, and make available, certain key information for sanctions screening and transaction monitoring.

Hong Kong's key financial regulators are also active more broadly in regulating fintech-related activities. As of 3 October 2023, the HKMA has granted licences to eight virtual banks in Hong Kong. From a legal and regulatory perspective, such virtual banks are subject to the same set of supervisory requirements (albeit with some adaptations) as conventional banks, under the HKMA's risk-based and technology-neutral approach.

The IA has granted four virtual insurance company licences under its Fast Track pilot scheme for applications for authorizations of new insurers owning and operating solely digital distribution channels. Similar to virtual banks, virtual insurers are subject to the same set of supervisory requirements applicable to conventional insurers (including solvency, capital, and local asset requirements).

The SFC has issued several statements and circulars concerning cryptocurrencies and other VAs. These include, among others, a statement on a regulatory framework for VA portfolio managers, fund distributors and trading platform operators and a circular on the distribution of VA funds, each issued in November 2018 (the “**November 2018 Statement**” and the “**November 2018 Circular**”, respectively) and a joint circular issued with the HKMA in January 2022 (the “**SFC-HKMA 2022 Circular**”) setting out updated guidance for intermediaries wishing to engage in various VA-related activities. See the responses to questions 9-15 below for further detail.

## 5. What is the current attitude of the government and of regulators to the use of blockchain technology in your jurisdiction?

The Hong Kong Government and key Hong Kong regulators have each launched various initiatives aimed at promoting the use of blockchain and DLT (see question 6), while also expressing caution as to the risks involved. The FSTB Policy Statement states that “[a]s an international financial centre, Hong Kong is open and inclusive towards the global community of innovators engaging in VA businesses” and notes that the Hong Kong Government would “put in place timely and necessary guardrails, so that VA innovations can thrive in Hong Kong in a sustainable manner”.

The Hong Kong Government and key regulators have themselves also been active in developing and piloting blockchain technologies (see, for example: Project Genesis, a collaborative project between the HKMA, BIS Hub and technology companies, discussed at question 3).

This balanced approach is reflected in the HKMA’s second whitepaper, published in October 2017 (“**Second DLT Whitepaper**”), which stresses the importance and value of DLT, while emphasising the attendant operational and legal / regulatory risks.

In its 2022 Annual Report, the HKMA stated that it is continuing to develop a roadmap of initiatives to further promote the adoption of fintech in the banking sector, will step up its efforts to research emerging technologies such as blockchain and will continue to work on developing a risk-based regulatory regime for stablecoins. The HKMA’s generally supportive attitude to emerging technologies is informed by its broader Fintech 2025 strategy, which seeks to catalyse the financial sector to adopt various new technologies by 2025 (see question 6).

The SFC has taken a similar position to balancing innovation and opportunities with risks. In a speech delivered in June 2023, the SFC’s CEO noted that, although supportive of the development and use of emerging technologies, “[b]ringing virtual asset service providers into a well-balanced regulatory fold is the only pathway to embrace innovation, instilling trust in the virtual asset ecosystem”. The SFC has spearheaded efforts to develop a new regulatory approach for VAs (see question 4) but has also expressed caution in several circulars and statements warning investors about the risks of investing in cryptocurrencies and other VAs, and of participating in ICOs and STOs (see questions 9-15 for further detail).

## 6. Are there any governmental or regulatory initiatives designed to facilitate or encourage the development and use of blockchain technology (for example, a regulatory sandbox or a central bank digital currency initiative)?

The Fintech Facilitation Office (“**FFO**”), established by the HKMA in 2016, facilitates the development of the fintech ecosystem in Hong Kong and promotes Hong Kong as an Asian fintech hub.

The HKMA’s Fintech Supervisory Sandbox (“**FSS**”) was also launched in 2016, enabling banks and technology firms to conduct pilot trials of fintech initiatives. It operates several tracks: FSS 2.0 enables projects to seek and provide regulatory feedback while piloting new technologies; FSS 3.0 facilitates fintech firms to apply for funding support from various sources; and FSS 3.1 provides development-stage funding support to fintech projects that have participated in the Hong Kong Cyberport’s Fintech Proof-of-Concept Subsidy Scheme, with the aim of promoting the commercialisation and wider adoption of such projects.

In 2021, the HKMA launched its ‘Fintech 2025’ strategy, outlining as its key focus areas: (i) encouraging full digitalisation of banks’ operations and adoption of regtech; (ii) increasing Hong Kong’s readiness relating to both wholesale and retail central bank digital currencies (“**CBDC**”); (iii) enhancing data; and (iv) increasing the fintech talent pool.

In its 2022 Annual Report, the HKMA also noted that it had completed a Tech Baseline Assessment of Hong Kong banks’ current and planned adoption of fintech and had assessed whether there were any areas that would benefit from the HKMA’s support and noted that it had developed a Pilot Scheme on Training Subsidy for Fintech Practitioners, to develop fintech capabilities in



the sector.

In a similar fashion, the SFC has established the Fintech Contact Point, including its own Fintech Advisory Group, to: (i) obtain information on the latest fintech trends; (ii) collect stakeholders' input on specific themes; (iii) identify the opportunities, risks, and regulatory perimeter implications of fintech; and (iv) broaden understandings of fintech as an evolution of the financial services industry. The SFC Regulatory Sandbox provides a confined regulatory environment for qualified firms to operate regulated activities under the SFO ahead of the deployment of fintech solutions on a larger scale.

The IA has launched various initiatives to promote insurtech development in Hong Kong, including: (i) the Insurtech Sandbox; (ii) an application fast track for authorization of new insurers owning and operating solely digital distribution channels; (iii) the Insurtech Facilitation Team to enhance communication with insurtech businesses, as well as to promote Hong Kong as an insurtech hub in Asia; (iv) the Working Group on Embracing Fintech in Hong Kong under the Future Task Force, focusing on promoting the application of fintech in the insurance industry; and (v) the entry into cross-border cooperation agreements with regulators in other jurisdictions.

In recent years, the HKMA has also been active in developing its own fintech pilots. Such activity included HKMA's collaboration with the BIS Hub and technology companies on Project Genesis (see question 3) to explore the tokenisation of green bonds with the aim of streamlining the bond issuance process. This culminated in 2023 with the issuance by the Hong Kong Government of a tokenised green bond (see question 3 for further detail).

The HKMA has also been exploring the feasibility of developing both wholesale and retail CBDCs. In January 2020, the HKMA and the Bank of Thailand ("**BOT**") published a report on Project Inthanon-LionRock, a joint CBDC research project to study the application of CBDC to cross-border payments through the development of a DLT-based THB-HKD network corridor prototype for funds transfers and foreign exchange transactions.

The project was renamed the "Multiple Central Bank Digital Currency Bridge ("**mBridge**") in February 2021 and was expanded to involve the Central Bank of the United Arab Emirates and the Digital Currency Institute of the People's Bank of China ("**PBoC**"). Supported by the BIS Hub, mBridge further explored DLT's potential to facilitate real-time cross-border foreign exchange transactions on a 24/7 basis. The BIS Hub's October 2022 report on the results of a pilot programme utilising mBridge concluded that while an achievable goal, further

exploration of the policy, macroeconomic, regulatory, and legal implications considerations is required before the cross-border platform could be released, and set out a roadmap for development of the platform in 2023-2024.

Building on its knowledge and experience in wholesale CBDC, in June 2021 the HKMA commenced Project e-HKD, a project to study the feasibility of a retail or general purpose CBDC. In May 2023, having released several discussion papers on the topic, the HKMA commenced an e-HKD Pilot Programme involving 16 firms from the financial, payment and technology sectors to examine potential use cases, as well as implementation and design issues, relating to e-HKD.

The HKMA, the SFC and the IA are members of the Global Financial Innovation Network, to which firms can apply to interact with regulators and conduct cross-border tests of innovative financial services. In October 2021, the HKMA and the PBoC announced they had signed a 'Memorandum of Understanding on Fintech Innovation Supervisory Cooperation in the Guangdong-Hong Kong-Macao Greater Bay Area'. The two authorities have agreed to link the PBoC's Fintech Innovation Regulatory Facility with the HKMA's Fintech Supervisory Sandbox to provide a "one-stop platform" allowing eligible financial institutions and technology firms to conduct cross-boundary pilots of fintech initiatives across Hong Kong and Greater Bay Area cities. The pilot trial facility was launched in February 2022.

## 7. Have there been any recent governmental or regulatory reviews or consultations concerning blockchain technology in your jurisdiction and, if so, what are the key takeaways from these?

The HKMA initially commissioned the Hong Kong Applied Science and Technology Research Institute ("**ASTRI**") to conduct an in-depth research project on the deployment of DLT. In November 2016, ASTRI published its 'Whitepaper on Distributed Ledger Technology' (the "**First DLT Whitepaper**"). The First DLT Whitepaper introduced the technology in detail and discussed the progress of three Proof-of-Concept ("**PoC**") projects on which the HKMA had worked alongside ASTRI and five leading regional banks.

The Second DLT Whitepaper, published in October 2017, provided an update on the development of DLT and outlined lessons from the three PoC projects. Having gathered professional input from a range of professional services, legal and academic experts, it also delineated key principles relating to DLT governance, control

measures and security management, and described common legal and compliance issues encountered when deploying DLT. The HKMA noted that it had adopted a risk-based, technology-neutral approach to regulation, reminding organisations deploying DLT that they were ultimately responsible for striking the right balance between innovation, customer protection and risk management.

The FSTB Policy Statement published in October 2022 set out the Hong Kong Government's policy stance and approach towards the deployment of blockchain and VA-related technologies in Hong Kong. Following its publication, projects such as the introduction of a new VATP licensing regime (see question 4) and issuance of a tokenised green bond (see question 3) have since been implemented. Other significant areas of regulatory interest flagged in the FSTB Policy Statement included stablecoins and CBDCs.

Initiatives regarding stablecoins are now being taken forward by the HKMA. In its January 2022 'Discussion Paper on Crypto-assets and Stablecoins', the HKMA explained the objectives and guiding principles underlying its approach to crypto-assets, with particular regard to payment-related stablecoins. Key objectives identified in relation to stablecoins include ensuring monetary and financial stability; protecting users; and adopting a technology-neutral approach to minimise risk of regulatory arbitrage across jurisdictions. In January 2023, following further consultation, the HKMA published a 'Conclusion of Discussion Paper on Crypto-Assets and Stablecoins' setting out a proposed regulatory regime for payment-related stablecoins and emphasising that the HKMA "embraces financial innovations and encourages institutions to explore the potential of distributed ledger technology...to support the responsible development of virtual asset ecosystem in Hong Kong". The HKMA signalled that it would impose a mandatory licensing regime on key activities such as stablecoin governance, issuance, stabilisation, and provision of stablecoin wallet services. The HKMA indicated that it aims to introduce a new regulatory regime for stablecoins no later than 2023/24.

In June 2023, the Hong Kong government announced the establishment of the Task Force on Promoting Web3 Development, which will bring together members of relevant market sectors, key government officials and financial regulators to provide recommendations on the sustainable and responsible development of Web3 in Hong Kong.

## 8. Has any official guidance concerning the

## use of blockchain technology been published in your jurisdiction?

As noted in the response to question 4 above, the SFC has issued various statements and circulars concerning cryptocurrencies and other VAs. These are discussed further in the responses to questions 9-15 below.

## 9. What is the current approach in your jurisdiction to the treatment of cryptocurrencies for the purposes of financial regulation, anti-money laundering and taxation? In particular, are cryptocurrencies characterised as a currency?

### Financial regulation

Regulators have taken an active interest in and proactive approach to regulating VAs, including cryptocurrencies, in Hong Kong. The HKMA and SFC have also regularly issued warnings about the risks and regulatory requirements relating to VAs (covering topics such as NFTs (see question 2), ICOs (see question 11) and STOs and VA futures (see question 14)). The financial regulatory framework in the jurisdiction continues to develop.

Certain VA-related activities may come within the scope of Hong Kong's financial regulation regime by virtue of classification as 'securities'. The SFC's guidance, published on September 2017, indicates that, under certain circumstances, cryptocurrencies, and other VAs (e.g., those offered via an ICO or STO) may constitute 'securities', as defined under the SFO — and thus be subject to Hong Kong securities law. More specifically, where digital tokens: (i) represent equity or ownership interests in a corporation carrying certain rights, these tokens may be 'shares'; (ii) are used to create or to acknowledge a debt or liability owed by the issuer, these may be a 'debenture'; or (iii) have their proceeds managed collectively by the ICO scheme operator to invest in projects, enabling token holders to participate in a share of the returns, these may be an interest in a collective investment scheme ("CIS").

Where the digital tokens involved in an ICO or STO fall under the definition of 'securities', dealing in or advising on, or managing or marketing a fund investing in, such digital tokens may constitute a regulated activity requiring licensing by or registration with the SFC, unless an exemption applies.

As discussed below, even where the VAs concerned do not constitute 'securities', a licence is required for

certain activities under the new AMLO regime that came into force in June 2023.

#### *Virtual Asset Trading Platform Operators*

Since 2019, an opt-in licensing regime has been administered by the SFC for VATPs offering 'security' token trading, requiring operators of VATPs which offer trading service in at least one 'security' to hold Type 1 (dealing in securities) and Type 7 (providing automated trading services) regulated activity licences.

On 1 June 2023, a landmark new licensing regime came into effect expanding the scope of regulation to VATPs offering 'non-security' token trading and permitting VATPs to offer certain services to retail investors (see question 4).

Under the new framework, a VA is defined as a cryptographically secured digital representation of value that: (i) is expressed as a unit of account or a store of economic value; (ii) either: (a) is used, or intended to be used, as a medium of exchange accepted by the public for payment for goods or services, the discharge of a debt and/or investment; or (b) provides voting rights on the management of the affairs of, or changes to the terms applicable to, any cryptographically secured digital representation of value; (iii) can be transferred, stored or traded electronically; and (iv) satisfies other characteristics prescribed by the SFC. This definition expressly excludes CBDCs, securities or futures contracts and certain other types of tokens.

A VA service is defined as operating a VA exchange i.e. providing services through means of electronic facilities whereby (a) offers to sell or purchase VAs are regularly made or accepted in a way that results in a binding transaction; or (b) persons are regularly introduced to other persons so they may negotiate or conclude sales or purchases of VAs in a way that results in a binding transaction; and (c) where client money or client VAs come into the possession of the person providing the services.

To acquire a VATP licence, an applicant must submit the required application documents (which include an external assessor's report) to the SFC and appoint not less than two Responsible Officers to supervise the conduct of its regulated activities. An applicant for a VATP licence, its Responsible Officers, licensed representatives, directors, and ultimate owners must satisfy the SFC's fit and proper test. These requirements broadly cover a person's financial status or solvency; relevant qualifications and experience; reputation, character, and integrity; and pre-existing disciplinary record.

#### *Virtual Asset Fund Managers*

Regulators have also issued guidance concerning VA fund managers.

The SFC's November 2018 Statement clarified that the SFC will supervise the following types of VA portfolio managers: (i) firms managing and distributing funds which invest in VAs that do not constitute 'securities' or 'futures contracts'; and (ii) firms licensed for Type 9 (asset management) regulated activity to manage portfolios, the portfolios of which include VAs that do not constitute 'securities' or 'futures contracts'. Such portfolio managers and fund distributors are subject to SFC oversight, subject to a de minimis threshold of 10% of the gross asset value of the fund being invested in VAs.

Supervised firms must comply with the SFC's Terms and Conditions for Virtual Asset Fund Managers, which were published in revised form in October 2019. The key areas covered by the Terms and Conditions include: (i) general principles (similar to those under the Code of Conduct for Persons Licensed by or Registered with the SFC (the "**SFC Code**") but tailored for VAs); (ii) organisation and management structures (including risk management controls and procedures); (iii) VA fund management; (iv) custody of fund assets and client money; (v) operations; (vi) dealing with the fund and fund investors (including provision of adequate information); (vii) marketing activities; (viii) fees and expenses; and (ix) reporting to the SFC.

On 3 April 2020, Venture Smart Asia Limited ("**VSAL**"), which had held Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) regulated activity licences from the SFC since 2015, became the first asset manager to be approved by the SFC as a VA portfolio manager via the imposition of the Terms and Conditions. On 20 April 2020, Arrano Capital, the blockchain arm of VSAL, announced the launch of the first cryptocurrency fund in Hong Kong to have an advisor and distributor (VSAL) licensed and approved by the SFC. As of 3 October 2023, 11 entities were licensed by the SFC to manage portfolios investing more than 10% in VAs.

#### *Other virtual asset related activities*

The SFC-HKMA 2022 Circular published in January 2022 provides important further guidance for VA intermediaries:

**Distribution of VA-related products:** VA-related products are considered 'complex' products and should only be offered to professional investors. Intermediaries should assess whether clients have sufficient knowledge



of VAs, and adequate net worth to bear the risks associated with trading VA-related products.

**Provision of VA dealing services:** intermediaries should partner only with SFC licensed VA trading platforms for the provision of VA dealing services, which should be provided only to professional investors to whom an intermediary provides Type 1 (dealing in securities) regulated services. As trading in non-security VAs may impact an intermediary's general fitness and properness to conduct regulated activities, intermediaries must comply with SFC and HKMA regulatory requirements, irrespective of whether the VAs involved are regulated securities.

**Provision of VA advisory services:** intermediaries must comply with SFC and HKMA regulatory requirements when providing advisory services, irrespective of the nature of the underlying VAs. Such services should be provided only to intermediaries' existing clients to whom they provide Type 1 (dealing in securities) or Type 4 (advising on securities) regulated services.

The transition period concerning the requirements in the SFC-HKMA 2022 Circular came to an end in June 2022.

#### *Cryptocurrencies as currency?*

Hong Kong regulatory authorities have consistently affirmed that cryptocurrencies, such as Bitcoin, are not legal tender and should not be characterised as currency. The October 2022 FSTB Policy Statement states that VAs and cryptocurrencies cannot serve as legal tender in Hong Kong, "as they are not by law regarded as valid and legal means of payment to adequately and effectively fulfil payment obligations".

In a circular to authorized institutions published in March 2019, the HKMA endorsed the Basel Committee on Banking Supervision's statement on crypto-assets and stated that it expects authorized institutions to take note of the prudential expectations regarding banks' exposures to crypto-assets and related services. The HKMA further noted that authorized institutions planning to engage in VA-related activities should first discuss with the HKMA and demonstrate that they have put in place appropriate systems and controls to identify and manage risks, highlighting that crypto-assets do not reliably provide the standard functions of money and are unsafe to rely on as a medium of exchange or a store of value.

Other statements by public bodies such as the Hong Kong Police Force ("HKPF"), Customs and Excise Department and the HKMA confirm their view that VAs and cryptocurrency should be understood as 'virtual

commodities' rather than currency.

The Hong Kong Government, in collaboration with relevant regulators, has also been exploring options to develop a retail CBDC (see question 6).

#### **Anti-money laundering and counter-terrorist financing**

Hong Kong public bodies have been warning the public about the risks posed by VAs and cryptocurrencies since 2014. Having long recognised the heightened AML and CTF risks posed by cryptocurrencies and other VAs, in November 2020 the FSTB published a consultation paper on legislative proposals to enhance AML and CTF regulation in Hong Kong through the introduction of, amongst other measures, a new licensing regime for VATPs. The gazetted amendments to the AMLO came into effect on 1 June 2023.

Further details of the licensing regime now in force can be found at question 4. Licensed VATPs will be subject to the AML and CTF requirements of the AMLO, including customer and counterparty due diligence, ongoing transaction monitoring and record-keeping requirements set out in Schedule 2. Licensees must also comply with the "Travel Rule", which requires VATPs to gather, and make available to counterparties, certain key information to facilitate sanctions screening and transaction monitoring. In the case of misconduct by a regulated person in relation to such matters, the SFC may impose a fine up to the greater of a maximum of HKD 10 million, or three times the profit gained or loss avoided.

The 2022 Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report published by the Hong Kong Government warned that, as a new segment of the banking sector, virtual banks are at greater risk of their vulnerabilities being tested by cybercriminals and of being used to launder crime proceeds. The report noted, however, that virtual banks have been responsive in addressing these emerging threats.

#### **Taxation**

In March 2020, the Hong Kong Inland Revenue Department ("IRD") published a revised version of Departmental Interpretation and Practice Note No. 39, which included a new section on digital assets. The Practice Note clarifies that the profits tax treatment of digital assets will depend on their nature and use.

**ICOs:** The IRD will review an ICO's white paper and other underlying documents to identify the rights and benefits (e.g., equity interests or a right to access to a future service similar to a voucher) attached to the digital

tokens. The tax treatment of the proceeds from an ICO will generally follow from these attributes (and not the form) of the tokens issued.

**Digital assets held for investment:** If digital assets are bought for long-term investment purposes (i.e., as capital assets), any profits upon disposal of such assets are exempt from profits tax. Whether the digital assets are treated as capital assets or trading stock depends on the specific facts and circumstances.

**Cryptocurrency:** Hong Kong-sourced profits from cryptocurrency business activities are chargeable to profits tax. Whether the buying and selling, exchange or mining of cryptocurrency amounts to the carrying on of a trade or business is a matter of fact and degree to be determined upon consideration of all the circumstances (e.g., the degree and frequency of the activity, its purpose, and its level of organisation).

## 10. Are there any prohibitions on the use or trading of cryptocurrencies in your jurisdiction?

Although the use or trading of cryptocurrencies is not prohibited in Hong Kong, the HKPF and the Customs and Excise Department, and Hong Kong regulators such as the HKMA and the SFC, have published statements and circulars warning investors of the risks associated with investing in or trading in cryptocurrencies (see question 9). Regulators have also emphasised repeatedly that engaging in regulated activities without being properly licensed or complying with relevant laws and regulations is prohibited.

The amended AMLO imposes a new mandatory licensing regime, which prohibits a person, whether in Hong Kong or elsewhere, from actively marketing regulated VA activities or associated services to the Hong Kong public, unless that person is properly licensed and regulated by the SFC (as mentioned at question 4).

In September 2023, the SFC issued statements regarding an unregulated VATP known as “JPEX” (“JPEX”, and the “JPEX Statements”, respectively), reminding the public that fraudulent behaviour in connection with VAs can constitute an offence (see question 18 for further detail).

In August 2023, the SFC issued a warning statement noting that certain unlicensed VATPs had misleadingly claimed to have submitted licence applications to the SFC despite having not done so or in relation to activities that would not be permitted under the new licensing regime. The SFC reminded VATPs that conducting unlicensed activities in Hong Kong constitutes a criminal

offence.

The SFC’s statements on ICOs published in September 2017 and February 2018 warned market participants that, depending on the facts and circumstances of an ICO, digital tokens being offered or sold may constitute ‘securities’ under the SFO, and therefore subject to securities laws. Offering or selling such securities without complying with relevant securities laws is prohibited. The SFC disclosed in those statements that it had sent letters to seven cryptocurrency exchanges warning them that they must not trade cryptocurrencies constituting ‘securities’ without a licence.

By way of example, in March 2018, the SFC announced that ICO issuer Black Cell had halted its ICO to the Hong Kong public and agreed to unwind ICO transactions for Hong Kong investors, following regulatory action by the SFC over concerns that Black Cell had potentially engaged in unauthorized promotional activities and unlicensed regulated activities. To address the SFC’s regulatory concerns, Black Cell agreed not to devise, set up or market any scheme that would constitute a CIS unless in compliance with the relevant requirements under the SFO.

A further statement by the SFC in June 2022 confirmed that similar considerations applied to NFTs which, if they cross the boundary between collectibles and financial assets, may constitute ‘securities’ or a CIS under the SFO.

In December 2022, the SFC published a warning statement regarding virtual asset platforms offering VA ‘deposits’, ‘savings’, ‘earnings’ or ‘staking’ services, noting that whilst such platforms may claim to offer a high ‘interest rate or a daily generation of additional VA at a guaranteed or fixed rate, a vast majority of these platforms is unregulated, and these platforms carry significant risks. The SFC reminded those offering such services that where these in fact constitute a CIS, it is an offence for such a person to market or distribute interests in a CIS without an appropriate SFC licence.

## 11. To what extent have initial coin offerings taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs?

Hong Kong had previously emerged as a leading Asian ICO hub, due to, amongst other factors, the PBoC’s announcement in September 2017 of an outright ban on ICOs in China.

According to a joint report published in January 2020 by

PricewaterhouseCoopers (“**PwC**”) and Crypto Valley, Hong Kong was one of the leading token-offering jurisdictions worldwide throughout 2018 and 2019 in terms of funding volume and number of completed offerings. The report also ranked Hong Kong as the leading jurisdiction for token offerings globally in 2019 by total funds raised, with a total of USD 1,009 million raised through four closed offerings (accounted for primarily by the USD 1,000 million raised by cryptocurrency exchange Bitfinex in May 2019).

In addition to Bitfinex, other notable examples of successful Hong Kong ICOs include: (i) Gatcoin, which offered a solution for businesses to transform their traditional discount coupons and loyalty points into digital tokens and raised USD 14.5 million in January 2018; (ii) AirSwap, which planned to develop a decentralized cryptocurrency exchange platform (“**DEX**”) and raised USD 36 million in October 2017; and (iii) the OAX Foundation, which planned to build a DEX and raised USD 18 million in July 2017.

However, as mentioned at question 2, ICO activity has declined significantly since its peak in 2018 as an active form of VA fundraising, consistent with the global decline in VA fundraising and increasing regulatory scrutiny. Such increased regulatory scrutiny includes, for example, a statement issued by the SFC on September 2017 on ICOs (“**ICO Statement**”) that such offerings may expose investors to heightened risks of fraud as well as the risks of insufficient liquidity, or volatile and opaque pricing.

Given the decline in ICO activity, as noted in a June 2021 report by the International Monetary Fund (“**2021 IMF Report**”), the SFC does not currently consider ICOs to be a significant source of risk to investors.

## 12. If they are permissible in your jurisdiction, what are the key requirements that an entity would need to comply with when launching an ICO?

The SFC’s ICO Statement (see question 11) explained that where the digital tokens involved in an ICO fall under the definition of ‘securities’, dealing in or advising on the digital tokens, or managing or marketing a fund investing in such digital tokens may constitute a ‘regulated activity’. Parties engaging in a regulated activity are required to be licensed by or registered with the SFC, irrespective of whether the parties involved are located in Hong Kong, provided that such business activities target the Hong Kong public.

In addition, where an ICO involves an offer to the Hong

Kong public to acquire ‘securities’ or participate in a CIS, registration requirements under the prospectus regime contained in Part II and Part XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (in the case of an offer to the Hong Kong public to acquire ‘securities’), or authorisation requirements under Part IV of the SFO (in the case of an issue of CIS offering documents to the Hong Kong public), may be triggered unless an exemption applies.

The ICO Statement also noted that parties engaging in the secondary trading of such tokens (e.g., on cryptocurrency exchanges) may be subject to the SFC’s licensing and conduct requirements; and that certain requirements relating to automated trading services and recognised exchange companies may be applicable to the business activities of cryptocurrency exchanges.

Further, any distributor regulated by the SFC is subject to fit and proper requirements that extend beyond the scope of its regulated activities, and which may cover an ICO-related product.

## 13. Is cryptocurrency trading common in your jurisdiction? And what is the attitude of mainstream financial institutions to cryptocurrency trading in your jurisdiction?

A joint report published in January 2020 by PwC and Crypto Valley (see question 11) ranked Hong Kong as one of the leading token-offering jurisdictions worldwide throughout 2018 and 2019 in terms of funding volume and number of completed offerings. The 2021 IMF Report, in a 2019 ranking of jurisdictions by cryptocurrency exchanges, identified Hong Kong as the fourth largest, with 22 exchanges, ahead of Singapore.

According to a June 2022 report by Chainalysis, as of June 2022, annual transaction volume in Hong Kong had grown 9.5% year-on-year (from VAs received by Hong Kong market participants with a value of nearly USD60 billion to over USD 65 billion). Most transactions in East Asia were of an amount equivalent to at least USD 1 million, with ‘retail’ transactions (i.e., equal to or lesser than the equivalent of USD 10,000) making up less than 10% of transaction volume. Nonetheless, with the recent shift towards clearer regulations for retail investors trading digital assets in Hong Kong following the coming into force of the new VATP regime (see questions 4 and 9), local retail demand for cryptocurrency trading may rise.

Financial institutions in Hong Kong are increasingly exploring opportunities relating to VAs and tokens. In February 2023, a private blockchain platform developed

by Goldman Sachs was used for the offer of a tokenised green bond by the Hong Kong Government (see question 3). In June 2023, Bank of China's Hong Kong-based global investment arm announced its issuance of CNH 200 million of fully digital structured notes tokenised on the Ethereum blockchain, the first occasion that a Chinese financial institution has issued a tokenised security in Hong Kong.

In July 2022, OSL announced that it was the first Type 1 (dealing in securities) licensed digital asset broker to distribute security tokens to professional investors in Hong Kong via a private STO. Each token represented a USD 10,000 unit of a Bitcoin-linked, coupon-rate USD bond. The tokens were developed using the Ethereum blockchain and carried a fixed and a bonus coupon linked to Bitcoin's performance.

Following a statement published by the SFC in October 2022, setting out regulatory requirements and expectations for VA exchange traded funds ("**ETFs**") that obtain exposure to VAs primarily through futures contracts, two such ETFs were listed on the HKEX in December 2022, which became the first Asian exchange to offer such products. The ETFs track standardised, cash-settled Bitcoin futures contracts and Ether futures contracts traded on the Chicago Mercantile Exchange ("**CME**").

#### **14. Are there any relevant regulatory restrictions or initiatives concerning tokens and virtual assets other than cryptocurrencies (e.g. trading of tangible property represented by cryptographic tokens)?**

In addition to cryptocurrency trading, there are a range of other token and VA-related activities being undertaken in Hong Kong (also discussed at question 13). Key examples include VA futures contracts, security tokens and tokenised bonds.

##### **VA futures contracts**

The VATP Guidelines published by the SFC in June 2023 expressly prevent VATPs from "conduct[ing] any offering, trading or dealing activities in virtual asset futures contracts or related derivatives". The SFC has indicated it will conduct a separate review of the regulatory framework for trading VA derivatives (including futures) in response to industry demand.

The publication by the SFC of the VATP Guidelines follows a series of circulars published by the SFC on the topic of VA futures. In December 2017, the SFC

published a circular on Bitcoin futures contracts ("Bitcoin Futures") and cryptocurrency-related investment products, reminding that Bitcoin Futures have the conventional features of a 'futures contract' (as defined under the SFO), despite the fact that the underlying assets are not regulated under the SFO. Accordingly, parties carrying on a business relating to Bitcoin Futures may need to be licensed to undertake the relevant regulated activities, unless an exemption applies.

In November 2019, the SFC issued another paper warning investors about the risks associated with VA futures contracts, focusing on the fact that they are largely unregulated, highly leveraged, and subject to extreme price volatility. The statement cautioned that any trading platforms or persons which offer and/or provide trading services in VA futures contracts in Hong Kong without a proper licence or authorisation may be in contravention of the SFO (if the VA futures contracts are 'futures contracts' as defined under the SFO) or the Gambling Ordinance (Cap. 148) (if the VA futures contracts are 'contracts for differences' as defined under the Gambling Ordinance).

##### **Security tokens and STOs**

In March 2019, the SFC published a statement on STOs, reminding investors to be wary of the risks associated with offerings structured to have features of traditional securities offerings but involving security tokens, which are digital representations of ownership of assets (e.g., gold, or real estate) or economic rights (e.g., a share of profits or revenue) utilising blockchain technology. The SFC noted that in Hong Kong, security tokens are likely to be 'securities' as defined under the SFO and therefore subject to securities laws.

As a result, any person who markets and distributes security tokens (whether in Hong Kong or targeting Hong Kong investors) is required to be licensed or registered to undertake the relevant regulated activities under the SFO. Under the Guidelines on Online Distribution and Advisory Platforms and paragraph 5.5 of the SFC Code, security tokens are regarded as 'complex products', such that additional investor protection measures also apply.

In July 2022, OSL announced that it was the first Type 1 (dealing in securities) licensed digital asset broker to distribute security tokens to professional investors in Hong Kong via a private STO (see question 13 above).

##### **Tokenised bonds**

In February 2023, the Hong Kong Government completed the world's first government-issued tokenised green bond offering (see question 3). The bond offered

had a principal amount totalling HKD 800 million and was issued under the Hong Kong Government's Green Bond Programme.

The primary issuance was settled on a delivery-versus-payment basis between securities tokens representing beneficial interests in the bond and cash tokens representing a claim for HKD fiat against the HKMA, in each case on a private blockchain network.

#### Other VA-related activities

In addition to cryptocurrency trading, numerous services involving the 'depositing', 'saving', 'staking' or 'lending' of VAs in exchange for a return akin to interest are also offered in Hong Kong. As noted at question 10, a statement published in December 2022, the SFC warned investors of the heightened risks associated with such unregulated arrangements and noted that these may constitute an unregulated CIS in certain circumstances.

In October 2022, the SFC also published a circular setting out regulatory requirements and expectations for VA exchange traded funds ("ETFs"). The SFC noted, among others, that ETF management companies must have a good track record of regulatory compliance, the ETFs must be traded on conventional regulated futures exchanges, and the statement of the ETFs should include upfront disclosures about the investment objective and associated risks.

#### 15. Are there any legal or regulatory issues concerning the transfer of title to or the granting of security over tokens and virtual assets?

The extent to which legally effective transfers of title to, or granting of security over, legal tokens and VAs can be achieved will depend primarily on whether such tokens and VAs constitute 'property' under Hong Kong law.

Recently, the Court of First Instance clarified in *Re Gatecoin Limited (in liquidation)* [2023] HKCFI 91 that cryptocurrencies fulfil the necessary criteria to be considered 'property' and are capable of being held on trust. The Court applied the four criteria for 'property' set out in *National Provincial Bank v Ainsworth* [1965] AC 1175 to cryptocurrency, concluding that cryptocurrency satisfied the requirements of being: (i) definable; (ii) identifiable by third parties; (iii) capable of assumption by third parties; and (iv) having some degree of permanence or stability.

Several other first instance judgments handed down since 2020 have already treated cryptocurrencies as property for the purposes of proprietary injunctive relief

(see: *Nico Constantijn Antonius Samara v Stive Jean-Paul Dan* [2021] HKCFI 1078; *Yan Yu Ying v Leung Wing Hei* [2021] HKCFI 3160; and *Huobi Asia Ltd & Anor v Chen Boliang & Anor* [2020] HKCFI 2750).

Whilst the reported cases dealing with VAs in Hong Kong were concerned with their treatment in the context of insolvency or injunctive relief rather than issues of conveyancing or security, our view is that on the basis of VAs constituting property under Hong Kong law, it should be possible (subject to the terms of such assets) to transfer legal title to, and to grant security over, VAs in the same way as other intangible property.

In the FSTB Policy Statement, the Hong Kong Government acknowledged that the unique characteristics of VAs "may not fit squarely into the current private property law categories or definitions in Hong Kong" and noted that it was open to future review of property rights regarding tokenised assets.

#### 16. How are smart contracts characterised within your legal framework? Are there any enforceability issues specific to the operation of smart contracts which do not arise in the case of traditional legal contracts?

The HKMA's Second DLT Whitepaper, reflecting input from the Technology Committee of The Law Society of Hong Kong, defines a smart contract as an arrangement whereby autonomous software running on a DLT platform automatically exchanges assets that are stored or represented on the DLT platform.

Whether a smart contract can be considered a legal contract is still a point of open discussion. The Second DLT Whitepaper notes that smart contracts should not be understood simply as contractual documents in digital form. While a smart contract usually contains the mechanics for execution, performance, and enforcement, it may not contain the entirety of the terms forming a contract at law. Using a smart contract without explicit contractual terms to completely replace a legal contract could cause uncertainty for participants in the event of unforeseen consequences or disputes.

There may, however, be other ways to characterise a smart contract and its relationship with relevant stakeholders that do give rise to legal recourse. Legal rights and remedies could arise from a separate legally binding contract, such as for securities trading on an exchange or Decentralised Autonomous Organisation ("DAO"), or other grounds, such as negligence, unjust enrichment and/or breach of fiduciary duties. Remedies



founded in unjust enrichment may be available to effect the restitution of unjust gains resulting from a breach of a smart contract.

The Second DLT Whitepaper also points to the 2016 DAO Ethereum hack as a reminder that programming / modelling errors and other such issues introduce the risk that smart contracts will fail to reflect the intention of their creators. Steps must therefore be taken to ensure that, if an undesirable consequence should occur, there is already a pre-agreed governance structure and contractual framework in place to handle the situation. Furthermore, the smart contract should contain an “escape hatch” or clean path for modifying and undoing the smart contract in light of unforeseen eventualities, which would allow human intervention under strict conditions (e.g., all party approval) without realistically threatening the immutability of the smart contract.

Given the underlying risks, the Law Society of Hong Kong has recommended that smart contracts should be adopted only if their design follows the latest best practices and international standards, such as the ‘escape hatches’ referred to above, and that parties should use them only having evaluated the accompanying risks.

**17. To what extent are smart contracts in use in your jurisdiction? Please mention any key initiatives concerning the use of smart contracts in your jurisdiction, including any examples relating to decentralised finance protocols.**

The HKMA noted in the Second DLT Whitepaper that smart contracts “have been singled out as requiring additional attention due to their huge potential for automating transactions in DLT”.

Smart contracts played a prominent role in one of the three use cases — the trade finance use case — selected by the HKMA for PoC development in the First DLT Whitepaper. The Second DLT Whitepaper, which reported the results of the development projects, explained that smart contracts had been used in various ways, namely: (i) to store the status of a transaction so that enquiries could be made quickly; (ii) to distribute event-triggered logic among nodes so that finance could be provided to customers more promptly; and (iii) to reconcile purchase orders and invoices automatically in the DLT network.

In collaboration with the Depository Trust & Clearing Corporation, the HKEX launched its pilot programme for HKEX Synapse in June 2023, a Stock Connect integrated

settlement platform deploying DAML smart contracts to help institutional investors better manage post-trade processes and workflow. The HKEX expects to launch HKEX Synapse some time in 2023. Other projects spearheaded by the HKMA include mBridge and HKMA’s research into and development of e-HKD, as discussed at question 6.

In the green finance context, Project Genesis combines smart contracts, blockchain, IoT, and digital assets, as further detailed at question 3.

In October 2018, the HKMA launched eTradeConnect, a blockchain-based trade finance platform developed alongside a consortium of twelve major Hong Kong banks which aimed to “improve trade efficiency, build better trust among trade participants, reduce risks and facilitate trade counterparties to obtain financing by digitising trade documents, automating trade finance processes and leveraging the features of blockchain technology”. The platform has since ceased operation.

**18. Have there been any governmental or regulatory enforcement actions concerning blockchain in your jurisdiction?**

The SFC has been active in taking enforcement action against cryptocurrency exchanges and issuers.

Most recently, in September 2023, the SFC issued the JPEX Statements, warning the public regarding JPEX and clarifying that no entity in the JPEX group is licensed by the SFC or has applied to the SFC for a licence to operate a VATP in Hong Kong, as well as flagging a number of suspicious features about the practices of JPEX and those actively promoting JPEX to the Hong Kong public. The SFC subsequently revealed that JPEX is suspected of fraud and that this matter has been referred by the SFC to the police. As mentioned in question 4 above, on 29 September 2023, following the publication of the JPEX Statements and as part of SFC’s efforts to disseminate information on VATPs in a clear, transparent and timely manner, the SFC published several lists of VATPs on its website.

In August 2023, the SFC issued a warning statement in relation to (a) misleading claims by certain unlicensed VATPs that they have submitted licence applications to the SFC despite not having done so and (b) activities that would not be permitted under the new licensing regime (see question 10).

In July 2021, the SFC published a statement warning that it was aware that Binance had offered trading services in stock tokens in several jurisdictions and that it was concerned such services may also be offered to Hong

Kong investors. The SFC emphasised that no entity in the Binance group was licensed or registered to conduct a regulated activity in Hong Kong and that it “[would] not hesitate to take enforcement action against unlicensed platform operators where appropriate”.

As described in question 10, in March 2018 the SFC confirmed that ICO issuer Black Cell had halted its ICO to the Hong Kong public and agreed to unwind ICO transactions for Hong Kong investors, following regulatory action by the SFC over concerns that Black Cell had potentially engaged in unauthorized promotional activities and unlicensed regulated activities. As discussed at question 10, the SFC had previously noted it had written to seven cryptocurrency exchanges warning them that they must not trade cryptocurrencies constituting ‘securities’ without a licence.

Other authorities have also taken action on VA-related offences. In February 2019, the HKPF arrested Wong Ching-Kit, better known as ‘Coin Young Master’, and his colleague for (among other offences) conspiracy to defraud investors through so-called cryptocurrency ‘mining machines’ sold by the pair relating to the cryptocurrency Filecoin. In July 2021, the Customs and Excise Department investigated its first case of a suspected money laundering syndicate involving virtual currencies.

In 2022, financial losses from VA-related scams had risen to HKD 1.7 billion, with the number of cases increasing by 67% compared to 2021 figures. The 2022 Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report noted that the HKPF is committed to combating VA-related crime, and that a taskforce has been formed to monitor the latest industry developments and crime trends.

### **19. Has there been any judicial consideration of blockchain concepts or smart contracting in your jurisdiction?**

As noted at question 15, the Court of First Instance recently clarified in *Re Gatecoin Limited (in liquidation)* [2023] HKCFI 91 that cryptocurrencies fulfil the necessary criteria to be considered ‘property’ and are capable of being held on trust. Several other first instance judgments handed down since 2020 have already treated cryptocurrencies as property for the purposes of proprietary injunctive relief.

To date, there has been no direct consideration of smart contracting by the Hong Kong courts. However future judicial consideration in this area seems likely given

increased local interest, legislation, and regulatory scrutiny in relation to VAs.

### **20. Are there any other generally-applicable laws or regulations that may present issues for the use of blockchain technology (such as privacy and data protection law or insolvency law)?**

The HKMA’s Second DLT Whitepaper, published in October 2017, identified seven broad legal issues arising from the use of DLT, namely: (i) legal basis (validity and enforceability); (ii) data protection and privacy (accessibility, immutability and cross-border considerations); (iii) cross-border and localisation issues (cross-border data flow, legal enforceability and localisation law); (iv) smart contracts (legal basis and effects); (v) liability (governance models and liability of participants); (vi) competition / antitrust laws (fair competition and antitrust practice); and (vii) legal issues in specific applications (asset management, mortgages / e-conveyancing, trade finance and digital ID management).

On privacy and data protection, the Second DLT Whitepaper explained that the three key characteristics of DLT that need addressing under the Personal Data (Privacy) Ordinance (Cap. 486) are: (i) the accessibility of certain DLT platforms, in which all nodes have equal access to all stored personal data regardless of whether they need to see it; (ii) the immutability of stored data, whereby data cannot be amended or erased; and (iii) the often cross-border nature of DLT, meaning that personal data may be stored outside Hong Kong. The Second DLT Whitepaper concluded that the simplest way to address privacy concerns appears to be to avoid storing personal data in the ledger, and rather keep only the hashes of personal data there. Storing personal data off-ledger in more conventional databases while keeping hashes in the ledger would ensure data integrity while controlling and limiting access to personal data. It is unclear, however, which steps are being taken to address such concerns.

The use of blockchain technology, in particular cryptocurrencies and other VAs, also raises obvious AML and CTF concerns given the unregulated nature of many parts of the industry. As noted by the HKMA’s then-Chief Executive in a speech given on September 2018, as many crypto-assets are designed such that anonymous email accounts can be used for trading and transfers without a central clearing agent, they effectively bypass the existing regime to combat money laundering and terrorist financing. Banks and other regulated financial institutions have, therefore, found it difficult to comply

with statutory or supervisory know your customer (KYC) requirements. As discussed at questions 4 and 9, the AMLO was amended partly in response to such concerns.

Cryptocurrencies and other VAs also present potential problems in the context of insolvency law, in particular with respect to asset tracing and the appropriate legal treatment of cryptocurrencies (see questions 15).

## 21. Are there any other key issues

### concerning blockchain technology in your jurisdiction that legal practitioners should be aware of?

The regulatory environment concerning VAs is consistently developing in Hong Kong, with the most recent significant development being the new licensing regime for VATPs applied in Hong Kong since 1 June 2023 (as discussed at questions 4 and 9). Legal practitioners would be advised to follow the most recent developments.

## Contributors

**Vincent Chan**  
Partner

[vincent.chan@slaughterandmay.com](mailto:vincent.chan@slaughterandmay.com)



**Ariad Porat**  
Associate

[ariad.porat@slaughterandmay.com](mailto:ariad.porat@slaughterandmay.com)



**Jonathan Hsu**  
Associate

[jonathan.hsu@slaughterandmay.com](mailto:jonathan.hsu@slaughterandmay.com)

