

29 August 2025

Submitted by email (vacustody-consult@fstb.gov.hk)

Division 5, Financial Services Branch
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue
Tamar Central, Hong Kong

**Re: ASIFMA Response to Public Consultation on Legislative Proposal to Regulate
Virtual Asset Custodian Services**

Dear Sir/Madam,

The Asia Securities Industry and Financial Markets Association (“**ASIFMA**”)¹ appreciates the opportunity to respond to the consultation questions set out in the Financial Services and the Treasury Bureau (the “**FSTB**”) and the Securities and Futures Commission’s (the “**SFC**”) *Public Consultation on Legislative Proposal to Regulate Virtual Asset Custodian Services* published on 27 June 2025 (the “**Consultation Paper**”). Feedback set out in this response has been collected from members (“**Members**”) of ASIFMA’s Fintech Working Group, Crypto Sub-Working Group and Anti-Financial Crime Working Group, which have been closely following global, regional and local developments relating to virtual assets in recent years.

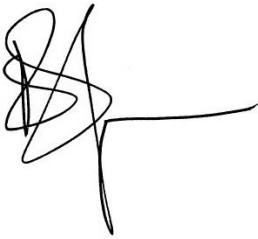
We are grateful to ASIFMA law firm member Latham & Watkins LLP for their support in drafting this response. Unless otherwise defined herein, the terms used in this response have the meanings assigned to them in the Consultation Paper.

¹ ASIFMA is an independent, regional trade association with over 160 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, and competitive Asian capital markets that are necessary to support the region’s economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region. More information about ASIFMA can be found at: www.asifma.org.

Overall, Members commend the Hong Kong Government's *Policy Statement 2.0 on the Development of Digital Assets in Hong Kong*, and strongly support Hong Kong's aim to be a premier global hub for digital assets. With respect to this Consultation Paper, Members strongly believe that having an independent custody function can increase investor confidence in digital assets, as well as help to manage conflicts of interest, ensure proper segregation of duties and mitigate insolvency and other risks. We hope our comments will help the FSTB and SFC strike the appropriate balance between fostering market development and managing risks as they work to develop a robust, market-friendly legal and regulatory regime for digital assets, so that Hong Kong remains an attractive place for digital asset custody firms to be based, while ensuring that digital asset custody activities are conducted in a safe, efficient, competitive, transparent and orderly manner.

We would be pleased to discuss our response in further detail. Should you wish to do so, please do not hesitate to contact me at rkapoor@asifma.org.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'R' followed by a horizontal line extending to the right.

Rishi Kapoor
Executive Director
Head of Technology and Operations
Asia Securities Industry & Financial Markets Association

Question 1	Do you have any comments on the proposed definition and scope (e.g. too narrow or too wide) of Virtual Asset custodian services (“VA custodian”) to be regulated?
<p>As a starting point, Members note the rapid developments happening with respect to VAs, especially as to custody technology, and stress the need for the VA custodian licensing and regulatory framework to be principles-based and technology-neutral. This is essential to future-proofing the regime and ensuring its continued success.</p> <p>On that basis, Members take the view that the definition and scope of the licensing regime should focus on the provision of custody services and ability for the custodian to <i>control</i> their clients’ VAs, rather than with reference to any specific custody technology.</p> <p>For example, Members note that use of certain technologies such as Multi-Party Computation (“MPC”) would enable a private key to be broken up into ‘shards’ so that a complete private key is not formed. Therefore, Members suggest that the VA custodian services definition should not refer to any specific method of custody (e.g., through the use of private keys or otherwise) in order to ensure that the definition is appropriately technology-neutral and future-proofed. This approach is consistent with the approach taken by the Dubai Virtual Assets Regulatory Authority, which defines ‘Custody Services’ as safekeeping of virtual assets for, or on behalf of, another entity, and acting only on verified instructions from or on behalf of such entity – rather than specifying types of instruments.</p> <p>Instead, Members expect further consultation on the regulatory regime applicable to VA custodians, including on the technical aspects of custodial security. This would be a more appropriate place to discuss the precise technological and security arrangements applicable to VA custodians, and it is important that the legislative provisions and amendments do not prescribe these requirements.</p> <p>Members also seek further guidance on the meaning of ‘safekeeping’. Members believe that the definition and scope should not be overly broad, so as to ensure that Hong Kong is not placed at a disadvantage to other comparable jurisdictions. In particular, providers of wallet software technology (who carry on a business providing technology for users to self-custody their VAs but do not have <i>control</i> over the VAs) and cloud service providers (which could have private keys stored on their platform, but which they cannot access) should not be captured under the VA custodian regime. In this respect, it is also important to provide clarity</p>	

regarding the application to firms that have *technological* and/or *legal* control of a VA. Members assume that the regime is intended to apply to those with legal control (who also hold such VAs), rather than those which exercise a solely technological function at the direction of another entity.

Members recommend that the VA custodian regime should also be technology-neutral and location-agnostic, so that VA custodians can have the flexibility to adopt the prevailing custody technology and control frameworks that would best safeguard client VAs. Any private key should also be permitted to be stored using cloud storage, rather than fixed to a Hong Kong premises. In this respect, Members are encouraged by the SFC's willingness to consider the use of MPC technology for VA custodians.

Members also highlight the importance of permitting firms to delegate custody services to a third party located outside of Hong Kong. Presently, some of the most established and trusted custody providers are domiciled overseas. Providing customers with the flexibility to access market leading firms, with strong track records of safeguarding VAs, would provide a strong security underpinning to the regime and enhance investor protection. Moreover, globally active firms that are considering providing services in Hong Kong may be deterred from doing so if they are unable to delegate custody to firms that they are already working with or are well established in the market. Attracting recognised, globally trusted brands also promotes competition and consumer choice, and advances Hong Kong's ambition to be a premier global hub for digital assets.

Members are open to the exact mechanism to achieve this. For example, the UK's draft regulatory regime for crypto assets allows an overseas custodian to be exempt from authorisation if it is sub-contracted by a firm that is already authorized to provide custody services (see *e.g.*, Part 3, 6c of HM Treasury's draft statutory [instrument](#)). The accompanying draft rules from the Financial Conduct Authority permit delegation to an overseas provider only where it operates in a jurisdiction with a dedicated and comparably robust custody framework (FCA [draft rule](#) 17.6.3). Members expect the mechanisms around delegation of custody services (such as to third parties located outside Hong Kong), including any requirements and exemptions, would be subject to further consultation (noting that many jurisdictions do not yet have established digital asset custodian licensing regimes).

Members would also appreciate clarity on the interaction of the proposed regime with existing HKMA guidance for banks providing custody services. At the minimum, Members

would expect this guidance to be updated to ensure that it remains aligned with the incoming regime.

Question 2

For entities which do not safekeep private keys but arrange a third party to custody the client VAs or otherwise safekeep the private keys (such as a private fund trustee of a VA fund that delegates the safekeeping of private keys to a sub-custodian), should they be required to obtain a VA custodian service provider licence? Please explain your comments.

Members take the view that entities which do not *control* or custody any client assets, but arrange for such client assets to be held with a custodian or sub-custodian, should not be required to obtain a VA custodian licence. In the case where platforms take on contractual responsibility for holding client VAs (*e.g.*, in the terms of service), but arrange for such client VAs to be held with a third-party custodian, Members believe that only the third-party custodian that holds (and *controls*) the client VAs should be required to obtain a VA custodian licence.

In particular, as recognised in the Consultation Paper, Members consider that acting as a VA custodian would require significant resources; therefore VA trading platforms, dealers and fund managers likely would want to delegate or outsource custodian responsibilities to licensed VA custodians that have adequate resources to safeguard client VAs. On that basis, they should not be required to obtain a VA custodian licence. This position is also consistent with trustees and custodians that place deposits with licensed banks, and which are not separately required to be licensed for taking deposits.

Members also seek confirmation that SFC-licensed VATPs, which are currently required to custody client VAs through their associated entities, would be permitted to delegate or outsource responsibility for holding such client VAs to third-party, SFC-licensed VA custodians. Members strongly support permitting VATPs to delegate or outsource responsibility for holding client VAs to an SFC-licensed VA custodian that can help to manage conflicts of interest, promote segregation of duties and mitigate insolvency and other risks.

Question 3

Are there any entities which should be licensed or registered for providing VA custodian services but are not caught by the proposed

	definition? Please explain your comments.
Members have no comments.	
Question 4	<p>For an entity (“Entity A”) within a corporate group that safekeeps private keys whereby personnel from different group entities (“Group Entities”) may also be involved in safekeeping the private key and/or signing a VA transaction:</p> <p>(i) Should the Group Entities be required or not be required to obtain VA custodian service provider licences? Please explain your comments.</p> <p>(ii) If the answer to (i) is yes, please provide your comments on the types of personnel within the Group Entities which should obtain an individual licence (“Relevant Personnel”). What steps of the transactions should trigger this licensing requirement?</p> <p>(iii) If the answer to (i) is no, please provide your comments on whether the Relevant Personnel of the Group Entities should be required to be accredited to Entity A (assuming Entity A will obtain a VA custodian service provider licence) and also obtain an individual licence. Please explain your comments.</p>
<p>With respect to (i) and (ii), Members take the view that such Group Entities should not be required to obtain a VA custodian service provider licence on the basis that such entities do not carry on business in Hong Kong or hold out as doing so. Even if certain individuals are employed by Group Entities that could be involved in safekeeping the private key and/or signing a VA transaction for a Hong Kong VA custodian, they should be regarded as doing so in their capacity for and on behalf of the Hong Kong VA custodian, and this should not cause the Group Entity itself to trigger the licensing obligation.</p> <p>With respect to (iii), please see our responses to Questions 8 and 9 below. In summary, Members believe that requiring the Relevant Personnel of the Group Entities – who are based outside of Hong Kong – to be accredited to the VA custodian service provider and obtain an</p>	

individual licence would be inconsistent with the territorial threshold of Hong Kong law and the view the SFC has taken with respect to licensing of overseas individuals.

Question 5	What are your comments on the proposed exemptions? Would there be other exemptions that are necessary?
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Members suggest the inclusion of an intragroup exemption for a company which only custodies VAs for its group companies (*e.g.*, its subsidiaries, its holding company, and wholly owned subsidiaries of that holding company), even if it may charge a fee for doing so and carry on such activity ‘by way of business’. This is on the basis that such company would only custody group assets (*e.g.*, for a treasury function) and would not custody or control any third-party VAs.

Question 6	Do you have any comments on the proposed scope of allowed activities?
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Members agree that licensed VA custodians should be permitted to be licensed for VA dealing activities as well (*i.e.*, it is not necessary to set up a separate entity for providing VA dealing services).

Members also agree with the proposal that VA custodians should be permitted to provide ancillary services (*e.g.*, staking).

Question 7	Do you have any comments on the types of VAs that a VA custodian service provider should not provide custodian services for?
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No.

Question 8	Do you have any comments on the scope of individual licence and engagement as relevant individuals for providing VA custodian service?
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Question 9	Should individuals with authority to approve or sign VA transactions be required to obtain a licence or be engaged as relevant individuals? If yes, what steps of the transactions should trigger this requirement?
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Given the potentially wide scope of personnel who could be captured in the proposed scope of “*staff members who perform more than a clerical role*”, Members strongly believe that individual licenses should be required only for senior staff with responsibility for relevant functions. On that basis, Members generally agree that: (i) staff members who perform, and have responsibility for, the VA custodian service provider’s discharge of its regulatory obligations should be licensed or be engaged as relevant individuals; and (ii) staff who assume oversight duties over the performance of custody functions should be designated as responsible / executive officers. There should also be appropriate guidance so that firms can prudently ensure that the appropriate personnel obtain the individual licence.

However, Members note that in the case of large groups where certain control functions can be distributed globally to individuals employed by other group entities, persons who can collectively approve or sign VA transactions could be based outside of Hong Kong (*e.g.*, in the case of MPC, such overseas persons would have access to shards). Given that the VA custodian licensing regime should principally apply to activities carried on in Hong Kong, Members have concerns about such overseas individuals being required to be licensed as relevant individuals in Hong Kong. This would be inconsistent with the territorial threshold of Hong Kong law and the view the SFC has taken that overseas activities are not licensable under the SFO and the AMLO, and the SFC does not have the power to license individuals for activities conducted overseas, *i.e.*, that the “*SFC does not license individuals who carry on business activities in another jurisdiction even though those activities might be conducted for or on behalf of, or in conjunction with, [a person] that is licensed under the SFO and/or the AMLO*”.

Nevertheless, Members recognize the need for the SFC to understand which individuals could, in whole or in part, approve or sign VA transactions for a VA custodian, and for such individuals to be accountable to the VA custodian. Members would instead recommend that VA custodians be required to identify such individuals to the SFC (*e.g.*, similar to the Manager-in-Charge regime, noting such persons are not necessarily required to be licensed and can be based overseas and employed by group affiliates).

Question 10	Do you think that licensed VA custodian service providers should be subject to the similar financial requirements as licensed corporations carrying on Type 13 regulated activity of providing depositary services for a relevant CIS? Do you think additional resources calibrated with
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Question 11	<p>scale of business or operations are required?</p> <p>Should other regulatory requirements be added to mitigate the risks of VA custodian services?</p>
<p>Members understand that the specific regulatory requirements applicable to VA custodians will be subject to a separate consultation exercise, and look forward to reviewing the SFC's proposed regulatory regime in detail. As a general note, recognising that there are requirements for banks to hold additional financial resources to mitigate operational risks arising out of custody of VAs, Members support establishing similar requirements for non-bank VA custodians to ensure there is a level playing field.</p> <p>Consistent with the current regulatory regime applicable to SFC-licensed VATPs that are required to custody their client assets, Members would expect that VA custodians will put in place a compensation arrangement approved by the SFC to cover potential losses of VAs, made up of a combination of third-party insurance, own funds or a bank guarantee.</p>	
Question 12	<p>What are your comments on the proposed transitional arrangement for the licensing regime for VA custodian service providers?</p>
<p>Members are concerned about the lack of a transitional period, since many VA custodians currently operating have already made substantive investments in their operations in Hong Kong. It is expected that the licensing process will involve significant resources and time, including to engage an external assessor to perform an external assessment of the relevant systems and controls. These are steps which can only be taken after the SFC finalises the regulatory regime for VA custodians. Any disruption in their ability to operate would undermine Hong Kong's ability to attract leading VA firms.</p> <p>If the FSTB and the SFC are not minded to have a transitional arrangement for VA custodian service providers, Members consider it crucial that there is sufficient clarity, adequate guidance and appropriate lead time given to the industry in relation to the licensing process, in order to ensure that VA custodians currently operating can properly prepare and submit their licence applications. Furthermore, it is imperative that the SFC provides appropriate assurances to the industry that it will have sufficient resources to fairly and efficiently process such applications prior to the implementation date.</p> <p>Members would also welcome an indication from the FSTB and SFC as to the proposed</p>	

sequencing of the VA custody regime and the VA dealing regime taking effect (*i.e.*, whether the FSTB and SFC envisage the custody regime taking place at the same time or in advance of the VA dealing regime, particularly given the proposal to require licensed VA dealers to custody client assets with licensed VA custodian service providers).

Question 13	Based on the “user-pays” principle, do you have any comments on requiring higher licensing application fees and annual fees for a VA custodian service provider licensed by or registered with the SFC (such as requiring fees in the same amounts as those for Type 3 regulated activity under the SFO or other higher amounts)?
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Members have no comments.

Question 14	Do you agree that, for the purpose of protecting the investing public, persons not licensed by or registered with the SFC should not be allowed to actively market VA custodian services to the public of Hong Kong?
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Yes, Members agree. Members would welcome confirmation that the SFC’s FAQ on the meaning of “actively markets” under section 115 of the SFO and section 53ZRB of the AMLO would equally apply to active marketing of VA custodian services.

Question 15	Do you agree that the SFC and the HKMA should be provided with the proposed powers?
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Members agree.

Question 16	Do you agree with the proposed sanctions, which are comparable to those under the existing regulatory regimes for VATPs?
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Members agree.

Question 17	Do you agree that a review tribunal mechanism should be put in place to handle appeals against the decisions to be made by the SFC or the HKMA in implementing the licensing regime?
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Members agree.

