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Cc: Members of Bills Committee (by E-mail)
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Fellow Compatriots:

I am Joseph Chen-Yu WANG, a self-employed proprietor of Bitquant Digital Services, a small startup, and I am writing in strong opposition to the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022.

I have a bachelors degree in physics from the Massachusetts Institute of Technology and have a doctorate in computational astrophysics from the University of Texas at Austin. I have several decades of software development experience working in both large corporations, such as J.P.Morgan and Halliburton, and small startups, such as my own company. My focus has been scientific supercomputing.

Currently, I provide technical services to virtual asset, web3, and blockchain companies in Hong Kong. My work in virtual assets is closely related to my background as an astrophysicist, as I am intent on turning the Greater Bay Area into a center for computational physics, artificial intelligence, and quantum computing research all of which are closely connected with virtual assets and web3 financial technology.

If this legislation is passed, I will seek a provisional license to operate a small exchange for virtual assets, and our company intends to assist other small companies in acquiring provisional licenses.

I have become alarmed and dismayed by recent efforts by certain foreign powers to impose technological and financial sanctions against the People's Republic of China, and believe that the development of a virtual asset industry in Hong Kong is a critical part of a national effort to resist these efforts and avoid a disastrous repeat of the events that led up to China's humiliation during and after the Opium Wars.

I have been following the deliberations of the Bills Committee concerning the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022, and I would like to thank the members of the

Bills Committee for its openness and transparency in discussing the proposed legislation.

After listening to the discussion of the Bills Committee meeting dated 14 October 2022, and I am highly concerned that the focus of the debate has been on the implementation details of the proposed legislation instead of the question of whether this legislation should be adopted at all.

In a time when Hong Kong is recovering from COVID, facing unprecedented hostility from certain foreign powers intent on limiting China's access to finance and technology, and is in intense competition with other financial centers for talent, I firmly believe that this legislation would be harmful to the continued viability of Hong Kong as an international finance center and the ability for Hong Kong to play a vital role in the technological and financial development of the People's Republic of China.

This bill does nothing to protect the Hong Kong Special Administration Region of the People's Republic of China against threats to national security does nothing to protect the consumer and would only serve to convince virtual asset service providers to leave Hong Kong for other jurisdictions with the consequential loss of jobs and talent from Hong Kong, and negative impact on competitiveness and social stability of the Hong Kong Special Administrative Region of the People's Republic of China.

Over the past few years, we have seen the virtual asset industry move from jurisdictions with intrusive and excessive regulation to others with more relaxed levels of regulation. Traditional financial centers such as New York City and London, are losing talent and business to other jurisdictions such as Miami, Florida, or Austin, Texas, which have more business-friendly environments. As a locale with a tradition of business-friendly regulations, Hong Kong should benefit from this environment, and initially, the decision to treat virtual assets as simply a virtual commodity, and to impose no new regulation created a booming virtual asset industry in Hong Kong.

However, as Hong Kong regulators have increased and tightened restrictions, virtual asset companies, have left Hong Kong for other jurisdictions. Consequently, the Hong Kong virtual asset industry is merely a shadow of its former self.

This legislation merely continues the regulatory mistakes and missteps that Hong Kong has made over the last several years, and it would be prudent for the Legislative Council to suspend consideration the bill, and to return Hong Kong to the simple regulatory framework in which virtual assets are treated for regulatory purposes as a commodity or security depending on the type of asset.

We note that the proposed legislation has extremely perverse incentives. As a matter of constitutional law, Article 112 of the Basic Law of Hong Kong forbids the Hong Kong government from imposing capital controls, and Hong Kong government, therefore, cannot prevent Hong Kong residents, including retail investors, from conducting business with virtual asset providers outside of Hong Kong.

The Hong Kong government can regulate the active marketing of services within Hong Kong, but in a world where information travels freely on the internet, this restriction can hardly be effective control of access. We, as have others, have noted that this legislation will encourage virtual asset service providers to serve the Hong Kong market from other jurisdictions, as there is simply no business case for a virtual asset service provider to endure burdensome and unnecessary regulation and engage in endless discussion and regulatory uncertain to set up a domicile in Hong Kong.

This legislation, therefore, would have a devastating impact on Hong Kong's post-COVID recovery and competition for financial and scientific talent. We see no reason why a virtual asset provider should set up a domicile in Hong Kong and endure needless regulation and oversight rather than simply setting up shop elsewhere and accessing the Hong Kong retail and professional investor markets through remote access. While the regulation may prevent outside providers from actively marketing to Hong Kong, the free flow of information on the Internet will mean that passive marketing not specifically targeting Hong Kong will be sufficient to allow both retail and professional investors in Hong Kong to be aware of outside offerings.

In addition, we wish to bring up two additional points regarding national security and with the previous missteps of Hong Kong regulators in regulating virtual assets.

1) This legislation is ostensibly not about financial regulation but anti-money laundering and counterterrorism. However, if this were the case, why is the agency tasked with regulation, the Securities and Futures Commission, rather than the law enforcement agencies?

Let us be clear that anti-money laundering and counterterrorism were merely a pretext for creating an entire licensing and regulatory system that has nothing to do with either anti-money laundering or counterterrorism. Invoking anti-money laundering and counterterrorism as a rationale for instituting regulations that have nothing to do with counterterrorism or national security has created many absurdities and difficulties.

The stated purpose of this legislation is to bring Hong Kong in alignment with FATF guidelines regarding counterterrorism and anti-money laundering. However, since this legislation was first proposed, international cooperation in anti-money laundering has been severely damaged by the misuse of sanctions to limit Chinese access to new technology and to interfere with the internal affairs of the People's Republic of China. We note that many members of the Hong Kong government are now the target of Western-led sanctions and that certain foreign powers have made no secret of their desire to limit China's technological development or to use of sanctions to interfere with China's internal affairs.

We note that Article 29(4) of the National Security Law, specifically makes it an offense to collude with foreign powers to impose sanctions or blockade or engage in other hostile actions against the Hong Kong Special Administrative Region or the People's Republic of China. We believe it a strong possibility that certain foreign powers may at some point attempt to use FATF guidelines to enforce sanctions or blockades making it necessary for the People's Republic of China to use virtual assets to circumvent sanctions or blockade regimes, and there has been no thought given as to how the current legislation would interact with the National Security Law should this occur.

Given that it is vital for the People's Republic of China to resist these efforts of economic coercion, it is, therefore, questionable the degree to which Hong Kong can or should participate in international anti-money laundering efforts, given that the People's Republic of China is now the target of many such activities, and it is also questionable whether any measure that hinders the development and deployment of financial technology such as virtual assets or blockchain is in the interest of the Chinese nation.

Virtual assets provide a mechanism by which the People's Republic of China can reduce its dependence on the US dollar and therefore resist the effects of international sanctions, and the development of virtual asset technology is a catalyst for the development of advanced computing techniques such as artificial intelligence and quantum computing which certain foreign powers wish to limit Chinese access to. We consider it likely that certain foreign powers will attempt to misuse FATF guidance and anti-money laundering rules as a means to limit China's access to technology, interfere with the internal affairs of China, and maintain the hegemony of the US dollar as a means of international trade settlement.

These are issues of foreign policy, defense, and national security, and therefore outside the scope of the autonomy of Hong Kong government. By instituting new restrictive anti-money laundering legislation at this point, we fear that the HKSAR government may be needlessly complicating the efforts of the Central Government in conducting national policy in this difficult time and in any event, merely to comply with international standards imposed by FATF is no longer sufficient reason to pass new legislation, as we are now in a world in which financial sanctions have been weaponized to threaten the prosperity and national security of the People's Republic of China.

Concerning national security and counterterrorism efforts in Hong Kong, the National Security Law, and the United Nations Sanctions Ordinance provide the Hong Kong government and the Central Government sufficient authority to conduct counterterrorism activities and to monitor and prevent activities prejudicial to the national security of the People's Republic of China. Given that anti-money laundering and counterterrorism are adequately handled by the National Security Law and the United Nations Sanctions Ordinance, there is, therefore, absolutely no need to impose new regulations and create additional requirements for virtual asset service providers in Hong Kong for anti-money laundering or counterterrorism purposes.

2) We have the highest respect for the hard work and dedication of the financial regulators in Hong Kong and commend them for the public service. However, we believe that without a massive increase in the staffing of the SFC and HKMA, which would contradict the small-state/big-market/low-tax ethos of Hong Kong that they have been completely overwhelmed by the virtual asset regulation thus far and would be completely overwhelmed and incapable of administering any future licensing regime.

We believe that the last few years have demonstrated that the approach that the regulators have taken toward virtual asset regulation in Hong Kong is fundamentally flawed. Rather than growing the industry, misregulation by the Securities Futures Commission and Hong Kong Monetary Authority has dramatically

shrunk the industry within Hong Kong and have pushed businesses out of Hong Kong.

Hong Kong regulators often blindly copy practices from other jurisdictions, such as the United Kingdom or Singapore, without a basic understanding of how these approaches may be inappropriate for Hong Kong and they have ignored the lessons of light regulatory and low-tax jurisdictions such as Florida and Texas within the United States and places such as Malta and Portugal within the European Union.

Moreover, Hong Kong financial regulators simply do not have the background in technology, business, and national security to make quick and decisive decisions, and have consistently been slow and indecisive concerning virtual asset regulation. We appreciate the willingness of the regulators to engage in dialogue with the industry, but this dialogue takes time, energy, and resources and severely limits the ability of companies to make fast decisions and adapt to market conditions, and often serves no beneficial social purpose. Moreover, how does one maintain a dialogue with an industry that does not yet exist?

Because Hong Kong has had a low-tax, small-state, strong market philosophy, the resources available to financial regulators are limited. This environment creates a situation where Hong Kong regulators find it easy to say no or refuse to make a decision but find it extremely difficult to say yes. Saying no and refusing to make a decision puts the regulator at minimal risk, but saying yes will expose the regulators to criticism if the decision goes badly. Hence the history of the previous few years is that when decisions are placed in the hands of Hong Kong financial regulators, they will refuse to make a decision that is effectively an answer of no.

We can see this pattern in the current discussion within the Bills Committee. Instead of making clear and decisive decisions regarding the role of professional and retail investors in virtual assets, the SFC insists on further consultations and discussion. The SFC is unable to describe what is the framework of the rules that it intends to impose. Again, this is not due to any mismanagement or bad faith on the part of the SFC but is the result of the simple fact that the SFC does not have the resources or internal expertise to make quick and decisive decisions. We fear that should this legislation be passed; the SFC will continue with this pattern and be unable to establish new regulations in a timely manner. Therefore rather than decreasing uncertainty, this legislation will increase regulatory uncertainty with the associated negative impact on the Hong Kong economy.

In the past few years, regulated institutions such as securities firms and authorized institutions have requested clarity and sensible rules from the SFC and HKMA regarding the ability of regulated institutions to conduct business with virtual assets. These efforts have been met by delay and indecision, making it impossible for regulated institutions to access new financial technologies and work with new and innovative startups.

The SFC has attempted to make a good-faith effort by using industry consultations. However, this approach is fundamentally flawed, as the technology and the major industry players can change radically from month to month, and the key stakeholders come from companies and indeed industries that do not yet exist or are completely unaware of the opportunities that exist in Hong Kong. Moreover, consultation with existing industry players runs the risk of regulatory capture, and the creation of policies that benefit existing, established companies but can negatively impact companies that do not yet exist, which are too small to devote resources to regulatory matters, or which will disrupt existing industry practices.

Rather than engage in endless discussion and fruitless consultations with regulators, virtual asset service providers are incentivized to make one quick decision.

Leave Hong Kong.

The limitations of the regulation are due to no fault of the regulators but rather are an inherent feature of the capitalist system of Hong Kong. Because Hong Kong places emphasis on the markets rather than the state, Hong Kong regulators are simply overwhelmed and have neither the time, resources, or expertise to make fast split-second decisions. Adopting this legislation merely makes the problem worse, as it will require overwhelmed and overworked regulators to assume additional responsibilities, leading to even more delay and indecision. Companies cannot survive if we are engaged in discussion or debate with regulators, regardless of how well-meaning they are. We simply want to be allowed to be able to do business as we see fit so that we can generate income and jobs for ourselves and our community.

We can see from this legislation that there have been years of discussion and the prospect of more years of debate in a technology environment that requires bold and decisive decisions to be made in hours. The

very fact that we have already wasted years discussing this legislation, and are looking at years more of indecision is precisely the approach that has wrecked Hong Kong's virtual asset industry.

This must stop.

Rather than creating new products and services, new companies must spend enormous amounts of effort on licensing and regulatory issues. This is devastating to small, innovative companies with new and unproven business models, which should be the future of Hong Kong's industry. And rather than focusing on providing sensible and pro-business guidance to existing regulated industries, this bill would extend licensing to a new class of business and result in even more delay and confusion across the entire virtual asset industry.

Any company that goes out of business is one less company generating jobs for Hong Kong youth, and any time, money, and energy wasted on needless bureaucratic decisions means fewer resources available for technology or employment.

The Hong Kong economy is currently in a very fragile state, and it is necessary to focus our efforts on economic recovery and meeting the challenge of a complex international geopolitical environment. We are only now opening up the borders with places outside of Mainland China, and when and how the borders with the Mainland will be open remains uncertain. We are facing unprecedented challenges but also unprecedented opportunities. Hong Kong has faced enormous social turmoil due to the lack of promising jobs for Hong Kong's youth. We face a hostile international environment in which outside powers seek to limit Chinese access to technology, and Hong Kong plays a critical role in resisting these efforts.

We can overcome. We will overcome.

But this legislation does not help.

The current bill does nothing to aid Hong Kong in recovering from COVID and the social turmoil of the last several years would, by contrast, hinder our recovery by imposing unnecessary regulations and create regulatory uncertainty that would make Hong Kong an unattractive destination for virtual asset innovation, and provide fewer resources for job and technology development. In this time of uncertainty, Hong Kong should focus on developing its capitalist system within one country, two systems framework, and this would call for rejecting any new measures that restrict the free market.

We note the submission from OSL and BC Technology Group CB(1)622/2022(01), in which they complain about the potential for confusion and misunderstanding of the provisional period. If a company as well financed and as familiar with the Hong Kong market as OSL believes that proposed legislation will lead to confusion and misunderstanding, what possible hope is there for a new startup or a company coming in from outside of Hong Kong?

If this legislation is passed, we are looking at months, perhaps years of completely unnecessary debate, argument, and confusion, all in a time in which Hong Kong should be focused on recovering from COVID, reopening normal trade and commerce with the Mainland, and to attract the people and businesses that have left it in the previous years and in attracting new and innovative people and businesses. Trying to attempt to fix these issues with more complex and confusing rules will simply lead to more misunderstanding and confusion.

We note that the precious metals portion of the legislation proposes additional staff for new enforcement activities. Yet, the SFC, already overworked and overstuffed, proposes to administer and entirely new licensing scheme without any requests for additional staff or resources. We believe that the result will be delay, confusion, and a regulatory system that serves no purpose other than to push companies away from Hong Kong.

Our solution is to suspend further consideration of this bill until the SFC can complete work on all parts of this licensing system. If the SFC cannot state what regulations are to be enforced, the Legislative Council should refuse to proceed with the legislation until they can do so. If the SFC does not have the resources to craft regulations now, it will not be able to do so if the legislation is passed.

Suspending further consideration of this legislation would send a clear message to the world that Hong Kong is open for business and that the free market, low taxation, and small state tradition that characterizes the capitalist system of Hong Kong remains intact despite the turmoil of the previous few years. Any assets that are classified as securities or futures would fall under the remit of the SFC and any assets

which are not securities or futures would be subject to normal business regulation.

In the upcoming Fintech Week, the Hong Kong government will be announcing its policy on virtual assets. I believe that the best policy is the capitalist policy, and the Hong Kong government should give the broadest possible space for the free market to grow and innovate and contribute to the development of Hong Kong within the People's Republic of China, and therefore this would be a golden opportunity to show the world that Hong Kong is a place of markets and innovation and not bureaucratic regulation.

We therefore believe and take the position that the best direction forward is to postpone further action on this bill indefinitely, and announce this fact to the world.

We further believe that suspending consideration of this legislation will have a beneficial effect on the regulatory environment in Hong Kong. Rather than wasting their time and resources implementing new legislation, the Securities Futures Commission, and Hong Kong Monetary Authority can look at the flaws in the current securities regulatory system which have come out during the debate of the Bills Committee, and address issues that the regulators have neglected over the last several years.

Passing this bill will simply increase the complexity of coordinating banking and securities regulation with this new regulatory system, while suspending further action on this bill simplifies the regulatory environment and allows regulators to focus on undoing the mistakes of the last several years, and providing clear and robust guidance to existing regulated industries allowing them to conduct business with virtual assets. The regulators can work with the Legislative Council to look at issues such as the definition of professional investors and concentrate on the proper regulation of virtual assets, which are securities.

In his speech on 1 July 2022, Xi Jinping stated that the task of patriots within Hong Kong to focus on ensuring stability and prosperity and fulfilling the historical destiny of the rejuvenation of the Chinese people. China is only now recovering from mistakes that were made two centuries ago, which China failed to develop technology and was humiliated by hostile Western powers with superior technology. This must never be allowed to happen again, and virtual asset technology is so important to the future prosperity and national security of the Chinese nation and the future global balance of power, that China simply cannot fall behind Western powers in this area.

Therefore, rather than focus intensively on the minutiae of the legislation, I believe that the Bills Committee should ask some basic questions.

- Given that certain foreign powers are attempting to misuse global financial regulations to limit access to technology and to interfere with the foreign policy and internal affairs of the People's Republic of China, why is it necessary to comply with the guidelines of FATF, when such guidelines may make the People's Republic of China more vulnerable to economic coercion by certain foreign powers?
- Given that Hong Kong has a fragile economy that is only now starting to recover from COVID, is this not an inappropriate time to institute new licensing or any new economic controls? Would it not be better to suspend any new regulation to allow businesses maximum freedom and flexibility in recovering from COVID?
- Given that financial regulation of virtual assets is primarily an issue of national security, technological development, and law enforcement, why is the Securities Futures Commission the lead enforcement agency?
- How does the Securities Futures Commission intend to coordinate the national security, foreign policy and technological development elements with the Central Government? Specifically, how does the administration intend to avoid conflict between this legislation and with Article 29(4) of the National Security Law, which makes it an offense to collude with foreign powers to impose sanctions or blockades against the HKSAR or the People's Republic of China? Does the Securities and Futures Commission have the institutional capacity to coordinate with the Central Government on issues of defense, foreign policy, and national security?
- Article 112 of the Basic Law forbids the HKSAR government from imposing capital controls and therefore, the HKSAR cannot prevent retail investors from accessing overseas virtual asset service providers. Does then a licensing scheme simply incentivize virtual asset service providers to avoid

setting up in Hong Kong?

- Given that Hong Kong financial regulators have shown an inability to act quickly and decisively on issues such as access to virtual assets for Hong Kong retail investors does this create a situation where licensing will only create more economic uncertainty and regulatory costs for virtual asset service providers?
- Is it wise to require regulations before we know what the regulations are? If the Securities and Futures Commission is unable to present a package of proposed regulation at this point, what assurance do we have that they will be able to decide a package at any point?
- Does the SFC have sufficient staff and expertise to administer a new licensing system and does this new system distract the SFC from regulation of security tokens or implementing virtual asset rules for regulated firms?
- How does the SFC intend to consult with industry partners when many of the companies impacted by the regulations do not yet exist or are not operating in Hong Kong? How can you consult with Google or Facebook before the internet exists?
- Is there a danger that consultation with existing companies will result in regulatory capture and conflict of interest which reinforces existing players while making it difficult for new entrants and smaller entities? Is there not a danger that existing companies would use regulation to prevent competitors which do not yet exist from entering the market?
- The focus on virtual asset exchanges seems to assume that the SFC believes that the ideal business structure is that of the Hong Kong Exchange, where there is a single regulated monopoly. Does this not ignore the differences between virtual assets and traditional securities? Is this the intention of the SFC? What is the vision of the SFC regarding virtual assets, and if the SFC has no vision but is adopting the vision of existing players, does this not discourage revolutionary and disruptive technologies?
- Much of the discussion assumes that the regulators are more familiar with virtual assets than the general public. Is this, in fact, the case? Given that young people have lived their entire lives on the internet and are often familiar with virtual assets, is it possible that they know more about virtual assets than the regulators do?

More generally.

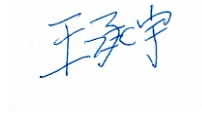
- Does this bill help Hong Kong achieve stability and prosperity?
- Does this bill create jobs for the youth of Hong Kong?
- In a time of uncertainty when China is facing unprecedented challenges and hostility from foreign powers, and Hong Kong is facing a crisis of talent, and post-COVID recovery, does it make sense to impose new regulations and restrictions?

And most fundamentally, why is this bill even necessary?

It is my view that the administration cannot provide satisfactory answers to these questions, and that being the case, the Bills Committee should postpone action on the legislation indefinitely.

I believe that all of us love China and love Hong Kong, and although we may disagree on how best to serve the city and serve the nation, any disagreements we have can be resolved by healthy, open, and democratic debate. My only humble request is that rather than spending time considering the minor technical details of the proposed legislation that the Bills Committee looks at the big picture and fundamental rationale and purpose of the bill.

Thank you for your time in considering my remarks.



Faithfully yours,
Joseph Chen-yu WANG

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