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Hong Kong virtual assets licence regime goes live: what next?

Scott Carnachan

The Hong Kong licensing regime for operators of virtual asset trading platforms (**VATPs**) commenced on **1 June 2023**.

The licensing regime is established under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (**AMLO**). The Securities and Futures Commission (**SFC**) is the regulator responsible for administering the licensing regime. Its [website](#) has a section that consolidates information about how to apply for a licence and the ongoing licence obligations of VATP operators.

Part I of this article sets out some key issues for operators of VATPs in light of the licensing regime. Part II of this article highlights some of the key regulatory guidance. Part III of this article summarises some of the key updates to the licensing regime that were introduced following the 31 May 2023 conclusion of the SFC's consultation on the proposed regulatory requirements for licensed VATPs. Our earlier article on the consultation proposals is available [here](#).

Part I – Key issues for operators of VATPs (in Hong Kong or elsewhere)

Key issues for operators of VATPs include:

1. Am I subject to the AMLO licensing regime?
2. If yes, am I eligible for the transitional licensing provisions?
3. What are the key dates I need to know about?
4. What changes do I need to make to my business to comply with the AMLO licensing regime?
5. How do I apply for a licence?
6. What does a licence permit me to do?
7. What do I need to do after I am licensed?
8. Do I need to comply with the licensing regime under the Securities and Futures Ordinance (**SFO**) as well?
9. If I am already licensed under the SFO as a securities broker, can I apply to be dual licensed under the AMLO as well?
10. What can I do if I don't want to apply for a licence?

Who is subject to the AMLO licensing regime?

The licensing regime applies to VATP operators based in Hong Kong or overseas. A VATP operator that has a place of business in Hong Kong will need to be licensed. A VATP operator based outside Hong Kong will need to be licensed if it actively markets its services to the public in Hong Kong.

The licensing regime only applies to VATPs that operate an automated matching system to match trades of buyers and sellers and that, directly or indirectly, hold virtual assets for clients. It does not apply to peer-to-peer platforms, where transactions take place outside the platform, or to platforms that do not hold virtual assets for clients.

The licensing regime does not apply to providers of other virtual asset-related services, such as custody or payment systems.

Who is eligible for the transitional licensing provisions?

An overseas VATP operator that does not have a physical presence in Hong Kong is not eligible for the transitional licensing provisions.

VATP operators that were carrying on business of providing VA services (as defined in the AMLO) in Hong Kong prior to 1 June 2023 may be eligible for the transitional licensing provisions. The SFC has indicated it will apply a high threshold for this purpose and will only accept VATP operators that have been in operation in Hong Kong prior to 1 June 2023 and with meaningful and substantial presence as eligible for the transitional provisions.

In determining whether an existing VATP operator has a meaningful and substantial presence, the SFC will take into account the following factors, amongst others:

- (a) whether the VATP operator is incorporated in Hong Kong;
- (b) whether the VATP operator has a physical office in Hong Kong;
- (c) whether the VATP operator's Hong Kong staff have central management and control over the VATP operator;
- (d) whether the VATP operator's key personnel (for example, those responsible for the operation of the trading system) are based in Hong Kong; and
- (e) whether the VATP's operation is live with considerable number of clients and volume of trading activities in Hong Kong.

A VATP operator that is eligible for the transitional licensing provisions and that submits an application to the SFC prior to **29 February 2024** is deemed to be licensed until the SFC either formally grants a licence or rejects the licence application.

What are the key dates you need to know about?

Commencement of AMLO licensing regime **1 June 2023**

Note: New VATP operators and existing overseas VATP operators that do not have a physical presence in Hong Kong must apply for a licence before offering their services in Hong Kong.

Deadline for VATP operators who are eligible under the transitional provisions to submit application to SFC **29 February 2024**

Note: At the time an eligible VATP operator submits its application, it is required to give the SFC a confirmation that it complies with and has arrangements to ensure compliance with the regulatory requirements applicable to licensed VATP operators. As a result, the applicant needs to be in compliance with the regulatory requirements no later than 29 February 2024.

Deadline for existing VATP operators that were carrying on a business of operating a VATP in Hong Kong prior to 1 June 2023 but that do not apply for a licence under the transitional provisions to wind down their business in Hong Kong. **31 May 2024**

What do you need to do to comply with the AMLO licensing regime?

Prior to submitting a licence application, an applicant VATP operator will need to:

- (a) Conduct a gap analysis of its existing structure, governance, operations, systems and controls to identify areas that need enhancement to comply with the regulatory requirements;
- (b) Implement any necessary enhancements, including any changes required to financial resources, custody arrangements, personnel, policies, documentation etc.;
- (c) Incorporate a wholly-owned subsidiary to act as the VATP operator's associated entity for the purpose of holding client assets and apply to the Registrar of Companies to licence such associated entity as a trust or company services provider (**TCSP**) under the AMLO; and
- (d) Engage an external assessor to prepare a Phase 1 Report (see "How do you apply for a licence?" below for further details).

Some of the more significant requirements are summarised below.

Minimum financial resources requirements

A licensed VATP operator must maintain at least HK\$5 million of paid-up share capital and at least HK\$3 million of liquid capital.

Requirements for responsible officers and executive directors

An applicant must appoint at least two responsible officers (**ROs**) in relation to the VATP services. Each RO must be "fit and proper" and must meet minimum experience requirements.

At least one RO must be on the board of directors of the corporation and actively participate in or be responsible for directly supervising the VATP service (such person is known as an executive director). Every individual executive director must be approved by the SFC as an RO. Board members do not have the option of being approved as licensed representatives only, because of their inherent seniority.

At least one RO must be available at all times to supervise the VATP operator's business. That means at least one RO must ordinarily reside in Hong Kong.

Establishment of token admission and review committee

A licensed VATP operator must establish a token admission and review committee. The committee is responsible for setting the criteria for virtual assets to be admitted to trading, the criteria for suspending and withdrawing virtual assets from trading, determining whether to admit, suspend or withdraw virtual assets from trading, imposing requirements on virtual asset issuers that are listed on the VATP and conducting regular reviews of these criteria and requirements.

Implement a market surveillance system

A licensed VATP operator must adopt a market surveillance system to identify, monitor, detect and prevent any market manipulative or abusive activities on its VATP. The market surveillance system must be provided by a reputable and independent provider.

Custody requirements

A licensed VATP operator must establish an "associated entity" to hold client assets. The associated entity must:

- (a) Be a company incorporated in Hong Kong;
- (b) Be a wholly-owned subsidiary of the VATP operator;
- (c) Be licensed by the Registrar of Companies as a TCSP;
- (d) Hold client assets on trust; and
- (e) Not conduct any business other than that of receiving or holding client assets on behalf of the VATP operator.

At least 98% of client virtual assets should be held in cold storage at all times, except to the extent the SFC agrees otherwise on a case-by-case basis.

All seeds and private keys (and their backups) must be securely stored in Hong Kong.

Insurance or other compensation arrangements for potential losses

A licensed VATP operator must have a compensation arrangement to cover potential losses, including potential losses arising from hacking incidents, theft, fraud or default. The compensation arrangement must cover potential losses of 50% of client virtual assets in cold storage and 100% of client virtual assets in hot and other storages.

The compensation arrangement can consist of one or a combination of the following:

- (a) Third-party insurance;
- (b) Funds (held in the form of a demand deposit or time deposit which will mature in 6 months or less) or virtual assets of the VATP operator or any corporation within the same group of companies as the VATP operator which are set aside on trust and designated for such a purpose; and
- (c) Bank guarantee provided by an authorized financial institution in Hong Kong.

The SFC must approve the compensation arrangement, and any changes to the compensation arrangement.

How do you apply for a licence?

Information required

A licence applicant must submit a substantial amount of information to the SFC about itself, its proposed business, its ultimate owners, its directors, its proposed responsible officers and its associated entity established to hold client assets. Where the licence applicant is applying under the transitional licensing provisions, it must also submit confirmations that it has been operating the VATP in Hong Kong immediately before 1 June 2023 and will comply with regulatory requirements from the date that it is deemed licensed.

Application method

The application must be made online through the SFC's WINGS platform. The application forms are available [here](#).

Application fees

A licence applicant must pay application fees to the SFC. Currently, the fees are HK\$4,740 for the VATP operator itself, HK\$2,950 for each proposed responsible officer and HK\$1,790 for each licensed representative. Additional fees apply if the applicant applies to be licensed under the SFO as well.

Application to be accompanied by external assessor reports

A licence applicant is required to engage an external assessor to assess its business going forward, and submit the assessor's reports to the SFC (i) when submitting the licence application (**Phase 1 Report**) and (ii) after the SFC has granted approval-in-principle of the application (but before final approval) (**Phase 2 Report**). Applicants should allow up to 6 months to finalise the Phase 1 Report.

Separate external assessors may be appointed to review different areas of the applicant's business. The assessor(s) must be independent and should have the necessary expertise and technical knowledge to conduct the required assessment. The SFC has clarified that independence means the service provider of a particular system should not also act as the external assessor for the same system. The SFC reserves the right to oppose the appointment of any external assessor.

The SFC has published its [Scope of External Assessment Reports](#), which sets out its expectations for the format and content of the Phase 1 and Phase 2 Reports.

The Phase 1 Report should cover the design effectiveness of the VATP's proposed structure, governance, operations, systems and controls, with a focus on key areas such as governance and staffing, token admission, custody of virtual assets, know your client, anti-money laundering, market surveillance, risk management and cybersecurity. The assessor should review and assess whether the VATP operator's policies and procedures are clearly written and comply with

applicable legal and regulatory requirements. The Phase 2 Report should be the assessor's assessment of the implementation and effectiveness of the actual adoption of the planned policies, procedures, systems and controls.

The SFC will grant final approval of a licence application only if it is satisfied with the findings of the Phase 2 Report.

The purpose of the requirement for external assessment reports is to streamline the SFC's processing of licence applications. It means an additional up-front commitment of time and costs for licence applicants, both in identifying and appointing an external assessor and in liaising with the external assessor on review of the VATP's proposed structure, governance, operations, systems and controls and the external assessor's final reports.

What activities does a licence permit?

Permitted activities

A licensed VATP operator can offer trading in virtual assets to "professional investors" (as defined in the SFO). A licensed VATP operator can also offer trading in certain virtual assets to retail investors.

Prohibited activities

A licensed VATP operator cannot:

- provide financial accommodation for its clients to acquire virtual assets (i.e. margin trading is not permitted);
- offer, trade or deal in virtual asset futures contracts or related derivatives;
- provide algorithmic trading services for its clients;
- make any arrangements with its clients to use client virtual assets held by the VATP for the purpose of generating returns for the clients or any other parties (i.e. lending, borrowing, staking etc.);
- engage in proprietary trading or market making on a proprietary basis.

Ability to offer virtual assets to retail investors

A licensed VATP operator can offer trading in eligible large-cap virtual assets to retail investors.

"Eligible large-cap virtual assets" refer to virtual assets which are included in a minimum of two "acceptable indices" issued by at least two independent index providers. An index provider may only be considered independent if it does not belong to the same entity or is not within the same group of companies as the issuer of the virtual asset or the licensed VATP operator.

An "acceptable index" is an index which has a clearly defined objective to measure the performance of the largest virtual assets in the global market and fulfils the following criteria:

- (a) The index should be investible, meaning the constituent virtual assets should be sufficiently liquid;
- (b) The index should be objectively calculated and rules-based;
- (c) The index provider should possess the necessary expertise and technical resources to construct, maintain and review the methodology and rules of the index; and
- (d) The methodology and rules of the index should be well documented, consistent and transparent.

At least one of the indices must be issued by an index provider which complies with the IOSCO Principles for Financial Benchmarks and has experience in publishing indices for the conventional securities market.

The SFC may permit a licensed VATP operator to offer trading in other virtual assets to retail investors on a case-by-case basis.

What are the ongoing licence obligations?

A licensed VATP operator will need to:

- (a) ensure ongoing compliance with regulatory requirements under the AMLO;
- (b) at all times comply with financial resources requirements for minimum paid-up share capital and minimum liquid capital;
- (c) make various ongoing regulatory filings with the SFC, including financial resources returns, annual returns and annual business risk management questionnaire;
- (d) make various ad hoc regulatory filings with and applications to the SFC, including as a result of changes to personnel, ultimate owners and scope of business activities;
- (e) ensure its representatives receive ongoing training; and
- (f) promptly report incidents of material breach or non-compliance with regulatory requirements to the SFC.

Do you need to comply with the licensing regime under the SFO as well?

In practice, yes.

The SFC has indicated it would be prudent for a VATP operator to be licensed under both the AMLO and the SFO, even if the intention of the applicant is only to permit listing of tokens that are not “securities” under the SFO. The SFC will operate a streamlined approach to process applications under the AMLO and SFO concurrently.

An applicant will need to apply to be licensed under the SFO for type 1 regulated activity (dealing in securities) and type 7 regulated activity (providing automated trading services).

The SFC rationale for proposing VATP operators obtain dual licences is that the terms and features of virtual assets may evolve over time and a virtual asset’s classification may change from a non-security token to a security token (or vice versa). By obtaining licences under both the AMLO and the SFO, any change in the nature of a token listed on a VATP would not result in the VATP operator breaching either licensing regime.

Given the SFC’s expressed preference and rationale for dual licences, an applicant that only applies for a licence under the AMLO will likely need to justify to the SFC why it does not need to apply for a licence under the SFO as well.

To the extent that there are differences in the requirements under the SFO and the AMLO, a dual-licensed VATP operator would need to comply with the more stringent requirement.

Can an existing SFC-licensed corporation apply to be dual licensed under the AMLO as well?

No.

A VATP operator that is licensed under the SFO will be subject to a condition that it only carry on the business of operating a VATP. As a result, existing SFC-licensed corporations that wish to operate a VATP will need to establish a new entity for this purpose.

What can you do if you don’t want to apply for a licence?

If you are a VATP operator carrying on business in Hong Kong and don’t want to apply for a licence under the AMLO, you must either:

- (a) So far as possible, restructure your operations so that the services you provide do not trigger a licence obligation under the AMLO; or
- (b) Wind down your business in Hong Kong - you must wind down your business on or before **31 May 2024**.

If you are a VATP operator carrying on business outside Hong Kong, you must cease actively marketing your services to the public in Hong Kong **immediately**.

Part II – Regulatory Guidance

The SFC has published the following regulatory guidance for VATP operators:

1. Guidelines for Virtual Asset Trading Platform Operators (VATP Guidelines) – the VATP Guidelines set out the requirements to establish and operate licensed VATPs, including in relation to:
 - (a) Minimum requirements to be considered “fit and proper”, competency requirements and continuous professional training requirements;
 - (b) Financial resources;
 - (c) Corporate governance and operations, including processes for admitting tokens for listing and processes to prevent market manipulative and abusive activities;
 - (d) Client take-on procedures and ongoing disclosures to clients;
 - (e) Custody of client assets;
 - (f) Cybersecurity;
 - (g) Conflicts of interest;
 - (h) Recordkeeping;
 - (i) Audits; and
 - (j) Ongoing reporting and notification obligations;
2. Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) (AML Guideline for LCs and SFC-licensed VASPs) – the AML Guideline for LCs and SFC-licensed VASPs applies the existing anti-money laundering requirements for licensed corporations under the SFO to VATP operators licensed under the AMLO; chapter 12 specifically relates to the anti-money laundering risks of virtual assets and the steps that need to be taken when assessing and managing such risks;
3. Prevention of Money Laundering and Terrorist Financing issued by the Securities and Futures Commission for Associated Entities of Licensed Corporations and SFC-licensed Virtual Asset Service Providers (Associated Entity AML Guideline) – the Associated Entity AML Guideline applies the AML Guideline for LCs and SFC-licensed VASPs to associated entities as if they were licensed as a VATP operator under the AMLO;
4. SFC Disciplinary Fining Guidelines – these Guidelines set out the basis on which the SFC intends to exercise its power to impose fines under section 53ZSP(3)(c) of the AMLO, which is consistent with how the SFC exercises its existing power to impose fines under the SFO;
5. Licensing Handbook for Virtual Asset Trading Platform Operators – the Handbook provides a general guide to the licensing requirements and the application process for VATP operators;
6. FAQs on licensing related matters – these include FAQs on conducting business outside Hong Kong, competence requirements for individuals, senior management accountability and maintenance of premises for business and record keeping; and
7. FAQs on conduct related matters – these include FAQs on account opening, dealing with client money, addressing conflicts of interest, cybersecurity and use of external electronic storage.

Part III – Key updates to the licensing regime following conclusion of SFC consultation

The final form of the licensing regime is broadly the same as originally proposed in the SFC’s consultation of 20 February 2023.

The consultation conclusions addressed a number of technical issues and provided clarifications, including:

- (a) For virtual assets admitted to listing, VATP operators are to take all reasonable steps to ensure product specific information they disclose is not false, biased, misleading or deceptive;
- (b) In considering whether to admit virtual assets to listing, VATP operators are only required to consider a virtual asset’s regulatory status in Hong Kong, rather than in each jurisdiction in which the VATP operator provides trading services;
- (c) For tokens intended to be made available for retail trading, VATP operators will not need to obtain and submit legal advice to the SFC confirming that tokens are not “securities” for the purposes of the SFO;

- (d) VATP operators are not to provide gifts, other than discounts of fees or charges, in connection with trading in specific virtual assets; and
- (e) Affiliates of licensed VATP operators are permitted to engage in proprietary trading of virtual assets, other than through the licensed VATP operator itself.

In relation to compensation arrangements, the SFC agreed to reduce the coverage required for client virtual assets held in cold storage to 50% of the value of such assets. The SFC also agreed that support for the compensation arrangements may include bank guarantees, funds (in the form of a demand deposit or time deposit which will mature in 6 months or less) or virtual assets, where appropriate.

The SFC confirmed that stablecoins should not be admitted for retail trading until such time as stablecoins are regulated in Hong Kong. The SFC noted that regulatory arrangements for stablecoins are expected to be implemented in 2023/24.

The SFC indicated it will conduct a separate review of the ability for licensed VATP operators to provide trading services in virtual asset derivatives in due course.

Consultation conclusions on changes to position limit regime

Pinky Siu

The Hong Kong Securities and Futures Commission (**SFC**) published its [consultation conclusions](#) on the proposed changes to the position limit regime for the derivatives market on 5 June 2023, following a [further consultation](#) in 2022.

Our [article in May 2022](#) highlighted the SFC's clarifications as to how the Securities and Futures (Contract Limits and Reportable Positions) Rules (**Rules**) are to be applied to unit trusts and mutual funds. In our [article in December 2022](#), we discussed the SFC's responses to the industry's comments.

In the consultation conclusions, the SFC concluded that it would be appropriate for the **person responsible for the day-to-day operation of funds** (i.e., the **asset manager**) to have the primary responsibility for compliance with the position limit and reporting under the Rules at the individual fund and sub-fund level. However, as the Rules apply to any person who "holds or controls" positions, trustees are still subject to the requirements of the Rules. In this connection, if a trustee has measures in place to ensure an asset manager managing its unit trusts has observed position limit compliance and reported positions according to the Rules, the SFC will consider that the trustee has discharged its obligations under the Rules. The SFC will update their Guidance Note on Position Limits and Large Open Position Reporting Requirements to specify the considerations that will be taken into account in determining trustees' compliance.

The SFC will also proceed with the other proposals set out in the consultation paper, which include amendments to the Rules in responses to the proposed enhancements to the exchange-level position limit regime initiated by the Hong Kong Exchanges and Clearing Limited.

Subject to the legislative process, it is expected the amendments to the Rules will be effective in December 2023. Asset managers and trustees are reminded to observe and put in place measures for compliance with the new requirements.

Update to guidance on short selling reporting

Pinky Siu

On 6 June 2023, the Hong Kong Securities and Futures Commission (**SFC**) updated the [Guidance Note on Short Selling Reporting and Stock Lending Record Keeping Requirements](#) (**Guidance Note**) and the [Frequently Asked Questions for Short Position Reporting](#) (**FAQs**). The updates are made in response to the launch of the HKD-RMB Dual Counter Model in the Hong Kong securities market on 19 June 2023.

Upon the launch of the HKD-RMB Dual Counter Model by Hong Kong Exchanges and Clearing Limited, an RMB trading counter was introduced to securities of certain companies listed in Hong Kong, to allow Hong Kong investors to trade those securities in RMB, in addition to HKD. Despite the difference in trading currency, shares of the same security in the two trading counters are generally of the same class, with the same holders' rights and entitlements, and fully interchangeable between counters.

To reflect the feature of this HKD-RMB Dual Counter Model in the context of short selling reporting, the SFC updated the Guidance Note to clarify the reporting requirements for inter-counter transactions, as follows:

- (i) when an investor buys a security at one counter first and sells at another, the sale is considered an ordinary sale, and
- (ii) when a market maker sells a security at one counter and buys it at another, the inter-counter transaction falls under the current exemption, subject to certain conditions.

The FAQs have also been updated to reflect that both the HKD and RMB counters of a security traded under the HKD-RMB Dual Counter Model are on the list of designated securities in respect of which reporting of reportable short positions is required. When determining whether there is a reportable net short position of a designated security with HKD-RMB dual trading counters, a person should (1) calculate the net short position of each counter by netting off the long positions of the other counter of the same designated security; (2) identify the counter which attributes to the aggregated short position; and (3) report the net position value of that counter separately.

Hong Kong SFC licensing and compliance hints – June 2023

Connie Chan

Information related to virtual asset-related activities required in revised financial return form, analysis of client assets for associated entity and audit questionnaire

On 25 May 2023, Hong Kong's Securities and Futures Commission (**SFC**) issued a [circular](#) publishing the revised versions of the financial return form, analysis of client assets for associated entity and audit questionnaire. The revised forms / questionnaire require additional information on virtual asset-related activities, and need to be used in respect of any period ending on or after 1 December 2023. We list out below three additional pieces of information that will need to be provided to the SFC:

1. Breakdown of client virtual asset storages into hot wallets, cold wallets and other locations. Virtual Asset Trading Platform Operators licensed by the SFC and their associated entities will need to provide the market value of client virtual assets deposited in hot wallets (i.e. private keys are kept online), cold wallets (i.e. private keys are kept offline) and other locations as of the date of financial year end in the analysis of client assets for associated entity.
2. AUM using virtual asset / virtual asset derivatives strategies. In addition to indicating the AUM using hedge fund, private equity, passive index tracking and "other" strategies, Type 9 licensed firms will need to provide their AUM using "virtual asset / virtual asset derivative strategies (including virtual assets which constitute securities)" in the revised financial return form.
3. Proprietary positions in virtual assets. Licensed firms will be required to provide the market value in respect of their proprietary positions in virtual assets in the financial returns. In addition, if the market value of an individual proprietary position in virtual assets is over 10% of the firm's excess liquid capital, product details (e.g. product name, product nature, market value) will also need to be provided to the SFC.

A reminder on ongoing liquid capital monitoring and the consequences of misleading the SFC: another disciplinary action on window-dressing liquid capital positions

The SFC recently banned the director of two former licensed firms from the industry for life in connection with his role in window-dressing the firms' liquid capital positions. The director orchestrated the fund movements in the bank accounts of the two former licensed entities to window-dress their liquid capital positions prior the grant of their licences, by depositing funds into and subsequently withdrawing the same funds from the bank accounts. After obtaining the licences, the director also withdrew funds from the bank accounts for his own use which resulted in their liquid capital deficits, and failed to ensure that the firms notified the SFC on the liquid capital deficits within the specified timeframe.

The various breaches committed by the concerned individual should be a stark reminder that the SFC does not tolerate attempts to mislead the regulator, as well as licensed firms' ongoing obligation to comply with the requirements in the Securities and Futures (Financial Resources) Rules (**Financial Resources Rules**).

A licensed firm's "liquid" capital must always exceed its "required" liquid capital under the Financial Resources Rules and it must formally notify the SFC "as soon as reasonably practicable and in any event within one business day of becoming

aware", if, amongst other things, its liquid capital ever falls below 50% of the liquid capital reported in its last submitted return or 120% of the required minimum amount.

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[SFC Consultation Conclusion on VASP Regime](#)

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[Court rules that cryptocurrency is property in Hong Kong](#)

[New updates relating to virtual asset trading and the Anti-Money Laundering and Counter-terrorist Financing Ordinance \(Cap.615\)](#)

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