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OVERVIEW OF VIRTUAL ASSETS LAW & REGULATION

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An overview of virtual assets law and regulation in over 20 jurisdictions:

Mauritius, Seychelles, Hong Kong, Singapore, Antigua & Barbuda, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Grenada, St. Kitts & Nevis, Estonia, Isle of Man, Gibraltar, Guernsey, Jersey, Malta, Abu Dhabi , Bahrain, Dubai International Financial Centre (DIFC), Dubai (UAE) and Qatar.

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Charltons
12F Dominion Centre,
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Mauritius

1. Virtual asset laws and regulations in Mauritius

The Government of Mauritius introduced a regulatory sandbox in 2018 to facilitate the growth of virtual assets and blockchain technology in the financial sector. The Virtual Asset and Initial Token Offering Services Act, 2021 (**VAITOS Act**) which came into force on 7 February 2022 established regulatory guidelines over virtual assets. The VAITOS Act consists of provisions regarding licensing, registration, controllers and beneficial owners, financial obligations and duties of virtual asset service providers.

The Financial Services Commission (**FSC**) is responsible for supervising and regulating the industry under the VAITOS Act. Empowered by the legislation, the FSC has the authority to issue rules (**FSC Rules**) and regulations providing guidance on compliance in connection with virtual assets in Mauritius. Such rules and regulations cover areas relating to fees, charges, prudential standards, client disclosure, risk management, custody of client assets, cybersecurity, financial reporting, statutory returns and other relevant matters. FSC Rules are published in the gazette without requiring ministerial approval. Additionally, the FSC has the authority to establish technical committees to investigate and report on issues related to the administration of the VAITOS Act.

What is considered a virtual asset in Mauritius?

According to the VAITOS Act, virtual assets are defined as a digital representation of value that:

1. may be bought, sold, or transferred between persons electronically or digitally;
2. may be used for investment, payment, or other similar purposes;
3. is not physical in nature like cash, and it only exists electronically or digitally; and
4. is not a legal tender produced by the government of Mauritius or another country.

It is also worth noting that virtual assets do not include digital representations of fiat currencies, such as a digital version of the Mauritian rupee, securities such as bonds or stocks, and other financial assets that are already covered under the **Mauritius Securities Act, 2005**.

What are the relevant laws and regulations?

The VAITOS Act serves as the primary legislation governing virtual assets in Mauritius. Effective from February 7, 2022, the VAITOS Act sets out a detailed legal framework for virtual asset service providers and issuers of initial token offerings (**ITOs**). Applicability extends to entities conducting business activities related to virtual assets in or from Mauritius.

The VAITOS Act excludes closed-loop items that lack transferability, exchangeability and usage for payment or investment. Examples of such closed-loop items may include but are not limited to: amusement park tokens, store coupons, reward points or loyalty program points that cannot be exchanged or transferred, and virtual gift cards that are non-transferable and can only be redeemed with a specific merchant or merchant group. It also does not apply to digital representations of fiat currencies, securities, and other financial assets. Not covered are digital currencies issued by central banks, whether domestic or foreign, and individuals acting professionally on behalf of those engaged in virtual asset-related financial services.

In addition to the VAITOS Act, the FSC has issued specific rules pertaining to various aspects of virtual assets concerning custody, client disclosure, capital and financial requirements, cybersecurity, advertisement publication, management, statutory reporting and travel. Furthermore, the FSC has released guidance notes concerning security tokens, security token offerings, non-fungible tokens (**NFTs**), anti-money laundering/combating the financing of terrorism (**AML/CFT**) measures, and the classification of virtual assets as an investment class for sophisticated and expert investors.

Who do such laws and regulations apply to?

The VAITOS Act applies to virtual asset service providers ("**VASPs**") and issuers of ITOs within the non-bank financial services sector in Mauritius.

Who are the relevant regulatory authorities in relation to virtual assets in Mauritius?

The VAITOS Act creates the FSC to regulate and supervise virtual asset service providers and issuers of initial token offerings. The FSC is tasked with ensuring protection of investors, preventing money laundering and terrorist financing and ensuring the stability of the financial system in Mauritius.

What are the penalties for breaches of virtual asset laws and regulations in Mauritius?

The penalties for breaches of virtual asset laws and regulations in Mauritius varies. Below is a summary list of the more common penalties for breaches for reference:

1. If a person carries out business activities as a virtual asset service provider in or from Mauritius without a valid license, they can be fined up to MUR 5 million and jailed for up to 10 years.
2. If an issuer of initial token offerings fails to give written notice to the FSC or disclose any information that could affect the interests of purchasers, they can be fined up to MUR 1 million and imprisoned for up to 5 years.

The FSC has the power to take enforcement action against virtual asset service providers and issuers of initial token offerings found to be in breach of their obligations under the VAITOS Act. The FSC issue directions requiring them to remedy any breaches, impose conditions on their licenses or revoke their licenses in severe cases. The FSC may also refer non-compliant persons to the relevant authorities for criminal prosecution (Section 36 of VIATOS Act, 2021).

2. Regulation of virtual assets and offerings of virtual assets in Mauritius

Are virtual assets classified as 'securities' or other regulated financial instruments in Mauritius?

Virtual assets are not classified as securities in the Mauritius, as they are defined separately under the VIATOS Act, 2021. The VIATOS Act, 2021 specifically excludes digital representations of fiat currencies, securities, and other financial assets falling under the purview of the Securities Act, 2005 from the definition of virtual assets. This means that securities, security tokens and other regulated financial instruments are still subject to the regulatory oversight of the Securities Act, 2005 and other relevant laws.

Furthermore, the FSC is responsible for regulating activities related to VASPs because they involve virtual assets and the law requires VASPs to register and obtain a license to operate in Mauritius. These VASPs are also required to comply with anti-money laundering and know-your-customer requirements under the Financial Intelligence and Anti-Money Laundering Act, which is another regulatory requirement for financial services providers in Mauritius.

Are stablecoins and NFTs regulated in Mauritius?

Stablecoins: The VIATOS Act, 2021 sets out the provisions for stablecoins. Stablecoins are defined as virtual tokens that are backed by fiat currency. In the case of virtual asset service providers holding custody of stablecoins for clients, they must maintain a sufficient amount of each type of stablecoin in order to meet their obligations to clients. This is to ensure that there is enough liquidity in circulation in the event of a large redemption request.

To provide further regulation and protection for investors, issuers of stablecoins must ensure that the white paper contains all the relevant information necessary to enable the purchaser or investor to make an informed assessment of the stablecoin before subscribing to the stablecoin. The white paper must, among other things, specify the funds that serve as reserve and identify the custodian or the depository responsible for the safekeeping of such reserve.

NFTs: According to the guidance notes under section 7(1)(a) of the Financial Services Act in Mauritius, NFTs may take different forms and may warrant different regulatory treatments. In particular, the following 3 scenarios were illustrated:

1. *Scenario 1* - NFTs deemed as digital collectibles not used for payment or investment purposes are outside regulatory purview.
2. *Scenario 2* - NFTs with characteristics of both digital collectibles and transferable financial assets, like fractional NFTs, are considered "securities." Any person who engages in or promotes regulated business activity with such NFTs must have an appropriate license issued by the FSC under the relevant legislation. Any platform that facilitates the sale and secondary trading of NFTs would also be required to be licensed by the FSC as a securities exchange or trading system under the Securities Act, 2005.
3. *Scenario 3* - Other NFTs, not digital collectibles or securities, necessitate registration under the VAITOS Act, 2021. Licensing is required for administering, holding, transferring, or exchanging such NFTs.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Mauritius?

Yes, in Mauritius, DeFi activities such as lending virtual assets are regulated under the VAITOS Act. Any virtual asset service provider carrying out such activities is required to obtain a license from the FSC as per section 7 of the VAITOS Act.

Additionally, the VAITOS Act requires VASPs to comply with numerous obligations such as maintenance of separate accounts, prevention of market abuse, custody and protection of client assets, among other requirements given in in Sub-Part C and D of Part III of the VAITOS. There also requires an application for a license to include various details about the proposed business activities, management, and control mechanisms, and more, as per section 8 of the VAITOS Act.

The licenses for VASPs are categorised under different classes, as per the Second Schedule of the VAITOS Act. Decentralised activities like lending would likely fall under Class M of the licensing regime. VASPs that conduct the business activities of virtual dealing, virtual brokering or virtual exchange between one or more forms of virtual assets or between virtual assets and fiat currencies would also be covered under Class M. VASPs must meet several requirements to obtain a Class M license from the FSC. Some of the key requirements are set out below:

1. must have a minimum of 2 directors and 1 senior executive who reside in Mauritius and have the appropriate level of competence, experience, and proficiency to carry out the business activities of the provider;

2. must have a minimum initial subscription or paid-up capital as determined by the FSC;
3. must have in place suitable arrangements for the safeguarding and administration of assets belonging to clients;
4. must implement appropriate measures to prevent market manipulation, abusive trading strategies, and other market abuses;
5. must be able to demonstrate that its business continues to meet the requirements under the VAITOS Act and any applicable regulations or guidance notes; and
6. must satisfy all other requirements under the VAITOS Act, including the criteria set out by the FSC for the issuance of a license under Class M.

Are there any restrictions on issuing or publicly offering virtual assets in Mauritius?

Yes, there are regulations in place in Mauritius regarding issuing or publicly offering virtual assets. The VAITOS Act, 2021 primarily regulates the activities of VASPs and issuers of ITOs.

Under Part IV of the VIATOS Act, 2021, issuers of ITOs must register with the FSC before issuing or offering their virtual tokens to the public. The registration process involves submitting a white paper that provides detailed information about the issuer, its business plan, technology, as well as information on beneficial owners, controllers, directors and customer due diligence as well as the virtual asset being offered. The white paper must also include the terms and conditions of the offer and any associated risks or limitations.

Additionally, an application for registration must be accompanied by:

1. a copy of the certificate of incorporation of the applicant;
2. a business plan or feasibility study setting out the nature and scale of the business activities proposed to be carried out;
3. policies and measures to be adopted by the applicant to meet its obligations under the VAITOS Act and related legislation relating to anti-money laundering, combatting the financing of terrorism and proliferation;
4. such application fee as prescribed in FSC Rules; and
5. any additional information, document or report requested by the FSC.

These requirements must be satisfied to enable the FSC to make a determination on the application. The FSC would also consider various factors such as the criteria set out for the grant of the application, the adequacy of the applicant's resources, infrastructure, staff, compliance arrangements, fitness and propriety of the applicant, among others, before granting registration as an issuer of ITOs.

The FSC will review the application and determine whether the issuer meets the requirements under the VAITOS Act and any applicable regulations, including anti-money laundering and counter-terrorism financing requirements.

Once a VASP is successfully licensed, it must comply with various ongoing regulatory requirements such as the custody and protection of client assets, prevention of market

abuse, financial obligations and reporting obligations. Failure to comply with these requirements may lead to penalties, including fines and imprisonment terms.

Further, the VAITOS Act, 2021 prohibits non-registered issuers from offering or issuing virtual tokens to the public. Section 24 of the VAITOS Act, 2021 provides that no person, other than a registered issuer, should conduct the business activities of an issuer of ITOs. The penalty for contravening this provision includes imprisonment for a term not exceeding 5 years and a fine not exceeding MUR 5 million.

Additionally, it is important to note that the VAITOS Act, 2021 does not cover virtual assets that are digital representations of fiat currencies, securities, and other financial assets that fall under the Securities Act, 2005. The issuance or offering of such virtual assets in Mauritius would be governed by the Securities Act, 2005 and its related regulations and requirements.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in Mauritius?

The VAITOS Act, 2021 states that certain exemptions exist for the restriction on issuing or publicly offering of virtual assets in Mauritius. These exemptions include the following:

1. *Closed-loop items*: The legislative provision defines these items as non-transferable, non-exchangeable, and not being able to be used for payment or investment purposes, and which a person cannot sell onward on a secondary market outside of the closed-loop system. Such items fall outside of the scope of the VAITOS Act, 2021.
2. *Digital currencies issued by central bank or central bank of a foreign jurisdiction*: Virtual currencies issued by the central bank of Mauritius or the central bank of a foreign jurisdiction to be exempted from the definition of virtual assets and ITOs under the VAITOS Act 2021. However, this exemption must only hold good in the form of monetary systems designated for use in local, domestic, or cross-border clearance and settlement systems and no other kinds of cryptocurrencies.

3. Regulation of VASPs in Mauritius

Are VASPs operating in Mauritius subject to regulation?

A VASP is defined as a person that, as a business, conducts 1 or more of the following activities or operations, for, or on behalf of, another person:

1. exchange between virtual assets and fiat currencies;
2. exchange between one or more forms of virtual assets;
3. transfer of virtual assets;
4. safekeeping of virtual assets or instruments enabling control over virtual assets;
5. administration of virtual assets or instruments enabling control over virtual assets; and
6. participation in, and provision of, financial services related to:

6.1 an issuer's offer and sale of a virtual asset; and

6.2 an issuer's offer or sale of a virtual asset.

VASPS operating in Mauritius are subject to regulation under the VAITOS Act, 2021 which requires VASPs to obtain a license from the FSC to operate in Mauritius. In order to obtain a license, a VASP must comply with various requirements such as registering with the FSC, maintaining adequate financial resources, and ensuring that its controllers, beneficial owners, and officers are fit and proper persons.

The VAITOS Act, 2021 also provides for the regulation and supervision of VASPs by the FSC, which includes the FSC having powers to conduct inspections, impose conditions on VASPs and take enforcement actions against them in case of non-compliance. Moreover, VASPs are also subject to various requirements under the VAITOS Act, 2021, such as custody and protection of client assets, prevention of market abuse, and transfer of virtual assets.

Are VASPs providing virtual asset services from offshore to persons in Mauritius subject to regulation in Mauritius?

Yes, VASPs providing virtual asset services from offshore to persons in Mauritius are subject to regulation in Mauritius. The VAITOS Act, 2021 provides regulation for all VASPs, including those providing virtual asset services from offshore to persons in Mauritius. The VAITOS Act, 2021 specifies that it shall apply to any VASP or issuer of initial token offerings that carries out its business activities in or from Mauritius.

Therefore, even if a VASP providing virtual asset services is operating from outside of Mauritius, if it is providing services to persons in Mauritius, it is considered to be carrying out its business activities in Mauritius and must comply with the regulatory requirements set out by the VAITOS Act, 2021.

What are the main requirements for obtaining licensing / registration as a VASP in Mauritius?

According to the VAITOS Act, 2021, the main requirements for obtaining licensing/ registration as a VASP are as follows:

1. the applicant must be a company;
2. the applicant must submit an application for a license in the form and manner approved by the FSC;
3. the applicant must specify the class of license being applied for;
4. the applicant must have adequate resources, infrastructure, staff with the appropriate competence, experience and proficiency to carry out the business activities of a VASP;
5. the applicant must have adequate arrangements for proper supervision of all transactions contemplated to be performed under the license so as to ensure compliance with the VAITOS Act, 2021 and the conditions of the license;

6. the applicant and each of its controllers, beneficial owners, their associates and officers are fit and proper persons to carry out the business activities to which the license is sought;
7. the applicant shall submit policies and measures to be adopted by the applicant to meet its obligations under the VAITOS Act, 2021, the Financial Intelligence and Anti-Money Laundering Act 2002 and the United Nations (Financial Prohibition, Arms Embargo and Travel Ban) Act 2019 relating to anti-money laundering and combatting the financing of terrorism and proliferation; and
8. the applicant must demonstrate that it can satisfy the criteria or standards issued by the FSC.

Notwithstanding the above, the requirements vary depending on the type of license the VASP is applying for:

1. *Class R license*: for providing a virtual asset service that involves the exchange of fiat currency for virtual assets and vice versa.
2. *Class I license*: for providing a virtual asset service that involves the exchange of one virtual asset for another.
3. *Class M license*: for providing a virtual asset service that involves the provision of custodial wallet services for virtual assets.
4. *Class O license*: for providing a virtual asset service that involves the operation of a virtual asset trading platform.
5. *Class S license*: for providing any other type of virtual asset service.

The applicant shall pay the application fee as prescribed in Financial Services (Consolidated Licensing and Fees) Rules 2008, which the key expenses are set out below:

1. Category 1 Global Business License is issued to any company proposing to engage in activities of a global service in and from Mauritius and whose shareholders are mainly foreign residents. The fixed annual fee for a Category 1 Global Business License for VASPs is MUR 50,000.
2. Category 2 Global Business License is issued to any company proposing to engage in activities from Mauritius and which have or expects to have a majority of resident shareholders or a majority of its voting shares are held by Mauritians. The fixed annual fee for a Category 2 Global Business License for VASPs is MUR 25,000.
3. Additionally, variable annual fees are payable as well, which would depend on the number of beneficiaries. The variable annual fees for VASPs are as follows:
    - 3.1 from 10,001 to 15,000 beneficiaries, the annual fee is MUR 10,000;
    - 3.2 for 15,001 to 20,000 beneficiaries, the annual fee is MUR 15,000; and
    - 3.3 for over 20,000 beneficiaries, the annual fee is MUR 20,000.

What are the main ongoing requirements for VASPs regulated in Mauritius?

The VAITOS Act, 2021 sets out a number of ongoing requirements for VASPs regulated in Mauritius. Some of the main requirements are set out below:

1. the VASP must comply with the obligations relating to the custody and protection of client assets, prevention of market abuse, transfer of virtual assets, and other financial obligations;
2. the VASP must maintain separate accounts for its clients' assets;
3. the VASP must notify the FSC of any material change to its business activities;
4. the VASP must ensure that its senior executive is a fit and proper person, and notify the FSC within 7 days of any change in its senior executive;
5. the VASP must ensure that its controllers and beneficial owners are fit and proper persons;
6. the VASP must comply with any conditions attached to its license or registration; and
7. the VASP must comply with any applicable regulations, guidelines or codes of conduct issued by the FSC.

What are the main restrictions on VASPs in Mauritius?

The VAITOS Act, 2021 sets out the regulatory and supervisory functions of the FSC with respect to VASPs in Mauritius. According to the VAITOS Act, 2021, VASPs are required to be licensed to carry out business activities in or from Mauritius, and failure to do so is punishable by imprisonment and a fine.

Additionally, VASPs must comply with other requirements specified under the VAITOS Act, which includes provisions related to the custody and protection of client assets, prevention of market abuse and transfer of virtual assets. The VAITOS Act describes various obligations that VASPs must adhere to, such as having a physical office in Mauritius, adequate resources and staff with the appropriate competence and experience to carry out business activities and the appointment of approved officers.

What are the main information that VASPs have to make available to its customers?

According to the VIATOS Act, 2021, VASPs are required to make available to their customers, at a minimum, the following information:

1. the fees and charges associated with the services provided by the VASP;
2. the terms and conditions of the services provided by the VASP;
3. the risks associated with the use of virtual assets and the relevant services provided by the VASP, including market risks and liquidity risks;
4. the procedures and arrangements for safeguarding and administration of assets belonging to investors, these assets shall be kept separate from the assets of the VASP,

where possible, and VASPs must ensure the adequate and appropriate custody and protection of virtual assets belonging to clients;

5. business continuity and planning measures in the event of disruption, which should ensure the safeguarding of virtual assets from loss or theft and redundancy in data storage; and
6. the complaint handling procedures and escalation mechanisms, which shall, where practicable, include an alternative dispute resolution mechanism for the resolution of complaints.

Furthermore, according to the Virtual Asset and Initial Token Offerings Services (Client Disclosure) Rules 2022, VASPs shall provide clients with the following general information in writing, as applicable before providing relevant products and / or services:

1. the name and address of the virtual asset service provider, and the contact details necessary to enable a client to communicate effectively with the virtual asset service provider;
2. a description of the products and services provided;
3. the methods of communication to be used between the VASP and the client;
4. the languages in which the VASP and clients may communicate;
5. any specific technological requirements that the clients shall have in place in order to benefit from the products or services (for example, if the client must have a particular wallet in order to receive a virtual asset);
6. a statement of the fact that the VASP is licensed under the VAITOS Act, 2021 and the activities for which it is licensed;
7. a description, which may be provided in summary form, of any conflicts of interest which may arise and how the virtual asset service provider will ensure fair treatment of the client;
8. any cancellation or withdrawal rights that the client has in relation to the products or services, including practical instructions for exercising any right to cancel or withdraw, including the contact details to which any cancellation or withdrawal notice shall be sent;
9. minimum duration of the contract, in the case of services to be performed permanently or recurrently;
10. any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases;
11. details regarding how complaints may be made and the VASP's procedure for handling complaints; and
12. the law and competent court applicable to the provision of the product / services.

What market misconduct legislation/regulations apply to virtual assets?

Furthermore, the VAITOS Act consists of provisions for preventing market misconduct as it relates to virtual assets and initial token offerings. Virtual asset exchanges in Mauritius are required to have systems and controls that:

1. identify and detect suspicious price spikes or anomalies;
2. prevent and monitor abusive trading strategies; and
3. take immediate steps to restrict or suspend trading upon discovery of market manipulative or abusive trading activities, including temporarily freezing accounts.

Under section 36 of the VAITOS Act, the FSC may also issue notices, guidelines, guidance notes, and provide feedback to VASPS and issuers of initial token offerings to help them detect and report suspicious transactions.

4. Regulation of other crypto-related activities in Mauritius

Are managers of crypto funds regulated in Mauritius?

Yes, managers of crypto funds are regulated under the VAITOS Act. The FSC is given regulatory and supervisory functions over VASPs which would cover managers of crypto funds.

The FSC is responsible for licensing VASPs and ensuring that they abide by high standards of professional conduct, including proper financial management, protection of client assets, and compliance with anti-money laundering and counter financing of terrorism obligations. In addition, the FSC may take enforcement action against those in breach of the legislation by, for example, suspension or termination of licenses.

Are distributors of virtual asset funds regulated in Mauritius?

Yes, distributors of virtual asset funds are regulated in Mauritius. Under the VAITOS Act, distributors of virtual asset funds fall under the scope of regulation as VASPs.

Part III, Sub-Part A, Section 7 of the VAITOS Act states that no person shall carry out the business activities of a virtual asset service provider in or from Mauritius unless they are the holder of a VASPs license. This includes distributors of virtual asset funds operating in or from Mauritius. Licensing requirements and conditions are set out in the VAITOS Act and VASPs are required to comply with proper standards of professional conduct, including adherence to anti-money laundering and counter-financing of terrorism obligations.

The VAITOS Act also sets out the responsibilities of virtual asset service providers in Part III, Sub-Part C. For example, VASPs must ensure the custody and protection of client assets (section 17), prevent market abuse (section 18) and ensure proper transfer of virtual assets (section 19). In addition, VASPs are required to meet financial obligations such as financial

requirements (section 20), separate accounts (section 21) and audited financial statements (section 22).

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Mauritius?

Intermediaries providing trading in virtual assets for clients or advising clients on virtual assets would likely be considered as VASPs and are required to be licensed by the FSC under the VAITOS Act. As such, such intermediaries must meet certain requirements to obtain the license, including meeting financial obligations and demonstrating adequate resources and infrastructure for proper supervision.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in Mauritius?

Mauritius is taking steps to regulate the fast-evolving technologies involving virtual assets and initial token offerings, while mitigating the risk of money laundering, financing of terrorism, and related risks. The FSC of Mauritius is exploring ways to enhance security and identity verification processes in the metaverse, which may have implications for crypto-related activity.

Mauritius is also exploring the potential of a Central Bank Digital Currency (**CBDC**), known as the Digital Rupee. The Bank of Mauritius has also released a public consultation paper on the issuance of CBDC (June 2023). This initiative reflects an interest in combining the benefits of cryptocurrencies with the stability and oversight of central banking, aiming to complement traditional monetary policies while ensuring AML and CFT compliance. A flexible legal framework is advocated for the CBDC, which is in its conceptual phase, to allow for trial phases, active supervision by local regulators, and the coexistence of CBDC with traditional currency and cryptocurrencies.

Has there been any notable events in Mauritius that has prompted regulatory change recently?

Mauritius is considering making changes in its financial sector by expanding the types of companies and creating rules for Electronic Money Institutions (**EMIs**). These actions show the country's dedication to meeting global standards in finance.

In November 2023, Mauritius started a trial of the digital Rupee, a digital form of its currency. This step suggests that the country might make more rules in the future that specifically deal with virtual currencies and assets.

While not explicitly tied to a virtual currency event, these changes demonstrate Mauritius' dedication to aligning with international standards.

6. Pending litigation and judgments related to virtual assets in Mauritius (if any)

There are currently no pending litigations or judgments in Mauritius.Top of Form

7. Government outlook on virtual assets and crypto-related activities in Mauritius

Mauritius has been working on regulations for virtual currencies and digital assets to regulate the growing digital asset market. The main regulation is the VAITOS Act, 2021, following global standards set by the Financial Action Task Force (**FATF**) to prevent financial crimes.

The FSC oversees these rules, licensing virtual asset service providers and registering issuers of initial token offerings. Acting without the proper license or registration is considered a financial crime under the VAITOS Act, 2021. To add clarity, the FSC issued guidance notes on Security Token Offerings (STOs), setting standards and introducing the first crypto licenses in Africa. The VAITOS Act is a significant move toward creating a secure regulatory system for digital assets in Mauritius.

Mauritius is also exploring CBDC, called the Digital Rupee. This aims to combine cryptocurrency benefits with central banking stability, complementing traditional monetary policies while ensuring compliance with anti-money laundering and countering the financing of terrorism.

8. Advantages of setting up a VASP in Mauritius

Mauritius presents an advantageous environment for establishing a virtual assets business, driven by its progressive regulatory framework, the VAITOS Act. This legislation provides clear guidelines on licensing, operational standards, and compliance obligations, ensuring legal certainty and operational clarity for VASPs.

The VAITOS Act emphasises compliance with international standards, particularly those set by the FATF, focusing on AML and CFT measures. This commitment to AML/CFT compliance includes requirements such as customer due diligence and transaction monitoring systems.

Mauritius, recognised as an international financial center, offers a stable political and economic environment, a competitive tax regime, and access to a skilled workforce.

Technology-friendly environment supported by the government's initiatives allows VASPs in Mauritius to leverage new technologies and business models, offering cutting-edge services and products.

With MINDEX Digital Custodian as an example, the first licensed VASP in Mauritius, the jurisdiction provides a first-mover advantage. This allows businesses to establish a foothold in the market and contribute to shaping the digital assets ecosystem within and beyond the jurisdiction.

February 2024

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Seychelles

1. Virtual asset laws and regulations in Seychelles

As of July 2024, the Virtual Asset Service Providers Bill (**VASP Bill**) has been enacted to regulate Virtual Asset Service Providers (**VASPs**), Initial Coin Offerings (**ICOs**), and token sales. The Financial Services Authority (**FSA**) is designated as the regulatory body responsible for licensing, supervision, and enforcement under this Bill. Additionally, the Anti-Money Laundering and Countering Financing of Terrorism Act, 2020 (**AML/CFT Act**) remains in force, establishing the AML/CFT regime in Seychelles. Under this framework, the FSA continues to ensure that entities involved in virtual assets comply with international best practices, including anti-money laundering (AML) and counter-terrorism financing (**CTF**) measures.

The VASP Bill provides a regulatory framework to govern VASPs operating in or from Seychelles. The Bill introduces strict licensing requirements, imposes AML/CFT obligations, mandates measures for consumer protection, and sets standards for cybersecurity.

What is considered a virtual asset in Seychelles?

The AML/CFT Act in Seychelles defines a virtual asset as "a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes, excluding digital representations of fiat currencies, securities, and other financial assets." This definition clarifies that legal tender recognised under Seychelles' laws and regulated by the Central Bank of Seychelles is not considered a virtual asset.

In the VASP Draft Bill for Consultation in Seychelles, a virtual asset is defined more comprehensively as "a digital representation of value that may be digitally traded or transferred, and can be used for payment or investment purposes that

1. is used as a medium of exchange, unit of account, or store of value and is not legal tender, whether or not denominated in legal tender;
2. is intended to represent assets such as debt or equity in the promoter;
3. is otherwise intended to represent any assets or rights associated with such assets; or
4. is intended to provide access to an application or service or product by means of blockchain."

The VASP Draft Bill explicitly excludes the following from its definition of virtual assets:

1. a digital representation of fiat currencies, securities and other financial assets;
2. a transaction in which a person grants value as part of an affinity or rewards program, which value cannot be taken from or exchanged with the person for legal tender, bank credit or any digital asset; or
3. a digital representation of value issued by or on behalf of the publisher and used within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform

In summary, the AML/CFT Act in Seychelles provides a concise definition of virtual assets, while the VASP Draft Bill offers a more detailed definition, covering various aspects and use cases of virtual assets, and explicitly listing exclusions to clarify its scope.

What are the relevant laws and regulations?

The National Anti-Money Laundering and Countering the Financing of Terrorism Committee (**NAC**) and FSA announced that Seychelles is in consultation phase for a proposed law on regulating virtual assets and VASPs. The Virtual Asset Service Providers Draft Bill for Consultation in Seychelles proposes legislation to regulate and license legal persons conducting business with virtual assets in Seychelles, with specific requirements for permissible activities, license applications, compliance forms, and risk assessment.

Although, the AML/CFT Act provides for the AML regime and the Securities Act, 2007 provides regulations for securities dealers, investment advisers, and securities exchange, with the FSA as the responsible body.

Additionally, Seychelles is working towards complying with the Financial Action Task Force's (**FATF**) Recommendation 15, which requires virtual assets service providers to be regulated for AML/CFT purposes, licensed, or registered, and subject to effective systems for monitoring or supervision.

Who do such laws and regulations apply to?

The Virtual Asset Service Providers Draft Bill for Consultation in Seychelles is proposed legislation that applies to legal persons or entities who provide virtual asset services from or within Seychelles. Legal persons in the context of this bill refer to a person who is a natural person, a partnership, a body corporate, a trust or a foundation.

Virtual asset service providers who provide financial services related to virtual assets, such as initial coin offerings or cryptocurrency exchanges, must comply with the regulations set

out in the bill. This also applies to companies and international business companies incorporated or registered under the Companies Act 1972 or the International Business Companies Act 2016 respectively in Seychelles.

Additionally, the FSA's AML/CFT guidelines may indirectly apply to users of virtual currencies, as VASPs are required to implement customer due diligence measures and monitor transactions for suspicious activities.

Who are the relevant regulatory authorities in relation to virtual assets in Seychelles?

The Financial Services Authority (FSA) is the primary regulatory authority for virtual assets in Seychelles. The FSA is responsible for the licensing and regulation of VASPs under the VASP Bill, in addition to its existing roles of overseeing securities dealers, investment advisers, and securities exchanges under the Securities Act, 2007.

As a member of the NAC, the FSA has played a key role in the development of the regulatory framework for virtual assets and VASPs in Seychelles. The FSA will oversee compliance with AML/CFT requirements, ensuring that virtual asset activities are conducted in accordance with Seychelles' legal framework.

What are the penalties for breaches of virtual asset laws and regulations in Seychelles?

As the regulatory framework for virtual assets and virtual asset service providers is still being developed in Seychelles, specific penalties for breaches of these laws and regulations are not yet defined. However, general penalties for breaches of anti-money laundering and countering the financing of terrorism laws apply in such cases. The AML Act establishes criminal offenses with significant fines and imprisonment of up to 10 years. Companies breaching AML/CFT laws can be fined up to USD 400,000 and/or face imprisonment of up to 5 years. Individual being sanctioned for Crypto and virtual assets in Seychelles can lead to confiscation of cryptos and fines up to SCR 3 million or imprisonment of up to 20 years.

Furthermore, the penalties for breaches of virtual asset laws and regulations set out in the Virtual Asset Service Providers Draft Bill for Consultation in Seychelles are severe. According to the bill, any legal person who carries on business using virtual assets in or from Seychelles unless they are licensed commits an offense, liable to a fine of up to USD 350,000 or imprisonment for up to 15 years or both. Failure to comply with registration requirements, such as those for initial coin offerings and non-fungible tokens, can incur fines of up to USD 150,000 or imprisonment for up to 5 years or both.

Other penalties may include administrative fines, directions to the licensee or applicant, restriction, suspension, or revocation of the license. The bill also establishes provisions for the authority to take enforcement action, such as suspension or revocation of a license, the issuance of compliance orders, or seeking injunctive relief.

2. Regulation of virtual assets and offerings of virtual assets in Seychelles

Are virtual assets classified as 'securities' or other regulated financial instruments in Seychelles?

As per the Securities Act, 2007, virtual assets such as cryptocurrencies are not classified as securities in Seychelles. The Securities Act provides regulations for securities dealers, investment advisers, and securities exchange and securitise financial products, but the Act specifically lists the financial products that are considered securities and virtual assets/ cryptocurrencies are not listed under the definition of securities. However, this would need to be determined on a case-by-case basis, and the relevant authorities such as the FSA or the NAC may conduct an analysis into the features of the digital asset to determine whether it falls within the regulatory scope of securities laws.

Are stablecoins and NFTs regulated in Seychelles?

At this moment, regulation and supervision of NFTs and stablecoins are nascent or non-existent in Seychelles.

Although, stablecoins and NFTs are regulated in Seychelles according to the Virtual Asset Service Providers Draft Bill for Consultation. Issuers of NFTs and ICOs are required to register with the FSC, and comply with the established regulations.

Stablecoins, which are a type of virtual asset that maintain a stable value relative to a fiat currency or another digital asset, are also considered a virtual asset under the bill. Virtual asset service providers who use stablecoins are subject to the same regulations as other virtual assets. This includes requirements for providing annual audited financial statements, appointment of auditors, and submission of a compliance form to the authority.

Similarly, virtual asset service providers who offer stablecoins are required to maintain capital and solvency requirements, separate accounts for client assets, and ensure the custody and protection of client assets, among other obligations.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Seychelles?

There is no specific legal or regulatory framework for decentralised finance products in Seychelles. It is important to note that the legal regime for regulation of cryptocurrencies is still underdeveloped in Seychelles.

However, according to the Virtual Asset Service Providers Draft Bill for Consultation in Seychelles, DeFi activities are regulated under the category of "permissible activities". As a virtual asset service provider carrying on virtual asset activities in Seychelles, DeFi platforms and service providers are required to register with the FSA under the Virtual Asset Service Provider License, and must comply with the established regulations.

Additionally, VASPs carrying out DeFi activities are required to meet specific requirements of license obligations established by the law. This includes maintaining capital and solvency

requirements, employing qualified or experienced staff, establishing procedures to avoid, mitigate or deal with conflicts of interest, and maintaining an indemnity insurance for the benefit of its clients. Such virtual asset service providers must also conduct an annual risk assessment and submit a compliance form to the respective authority.

In response to recent market developments, the Seychelles FSA has cautioned investors about the risks associated with virtual assets and ICOs. The FSA is actively verifying and scrutinising entities that falsely claim to be registered or licensed in Seychelles.

Are there any restrictions on issuing or publicly offering virtual assets in Seychelles?

According to the Virtual Asset Service Providers Bill, 2023, any legal person or entity who wishes to issue ICOs or Non-Fungible Tokens (**NFT**) in Seychelles must first register with the FSA. It requires that such a person must apply in the approved form and provide information that is not false or misleading.

In addition to this, any legal entity that carries on business using virtual assets from Seychelles must obtain a VASP license from the FSA. The Bill has laid out various registration and licensing obligations. Once a person or entity has applied for registration, the FSA will consider the application and grant or refuse registration within the prescribed period. Similarly, a person or entity seeking to obtain a VASP license must apply in the approved form and provide information as required by the FSA. The application will be granted or refused within the prescribed period after consideration of the submitted information.

In addition to the above, the Bill has also laid out obligations and requirements for VASP licensees. These include fulfilling fit and proper assessment criteria, maintaining adequate net assets, conducting business in a prudent and integral manner, maintaining adequate accounting and other records, and implementing cyber-security programs.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in Seychelles?

Yes, there are exemptions provided for in the Financial Services Authority (Regulatory Sandbox Exemption) Regulations, 2019. These regulations provide an exemption from certain regulatory requirements for eligible persons seeking to test innovative financial products, services, and business models in a controlled environment known as a regulatory sandbox.

Eligible persons can apply for an exemption from restrictions on issuing or publicly offering virtual assets in Seychelles during the testing period as long as they comply with the conditions and disclosure requirements set out in the First and Second Schedules of the regulations.

The First Schedule of the Financial Services Authority (Regulatory Sandbox Exemption) Regulations, 2019 provides the requirements that must be met for an eligible person to apply for an exemption to issue or publicly offer virtual assets during the testing period. These requirements include:

1. The virtual asset must not be a security.
2. The issuer must fully disclose all information necessary for assessment of the virtual asset.
3. The issuer must clearly indicate the risks associated with investing in the virtual asset.
4. The virtual asset must not be issued to retail clients during the testing period.
5. The virtual asset must not be traded on a secondary market during the testing period.

The Second Schedule provides the conditions that must be met by the eligible person for providing eligible financial services under the regulatory sandbox exemption. These conditions include:

1. The eligible person must maintain records of all transactions involving virtual assets and the identity of the persons involved.
2. The eligible person must provide regular reports to the Financial Services Authority on the testing activities and the results obtained.
3. The eligible person must comply with any other conditions or restrictions imposed by the Financial Services Authority.

Failure to comply with the conditions and requirements specified in the First and Second schedules could lead to the withdrawal or variation of the exemption by the Financial Services Authority.

It is important to note that the regulatory sandbox exemption only applies during the testing period and the exemption will cease if the conditions are not met or if the financial service provided is a threat to the public interest or market stability.

3. Regulation of VASPs in Seychelles

Are VASPs operating in Seychelles subject to regulation?

Seychelles is currently in the consultation phase for a proposed law on regulating virtual assets and VASPs. However, VASPs operating in Seychelles are subject to regulation under the Virtual Asset Service Providers Bill, 2023. The Bill provides for the regulatory framework for the licensing and supervision of legal persons who conduct business using virtual assets in and from Seychelles. Its aim is to protect the interests of clients and their virtual assets, ensure compliance with legislative requirements, and investigate matters connected therewith.

According to the Bill, no legal person or entity can carry on business using virtual assets in or from Seychelles unless they are licensed. Failure to do so is an offence and is liable to a fine not exceeding US$ 350,000 or to imprisonment for a term not exceeding 15 years or both.

The Bill stipulates the general requirements and obligations for VASP licensure, such as the fit and proper assessment of directors and principal officers of the applicant, adequate

capital and solvency requirements, cybersecurity measures, in-person presence in Seychelles, maintaining adequate accounting records and other records, and more.

VASPs must also comply with the Authority's request for information and reports, including submitting an annual declaration and cyber-security report.

Are VASPs providing virtual asset services from offshore to persons in Seychelles subject to regulation in Seychelles?

Yes, VASPs providing virtual asset services from offshore to persons in Seychelles are subject to the regulatory framework provided in the Virtual Asset Service Providers Bill, 2023. According to the Bill, a legal person is considered a virtual asset service provider if it carries on virtual asset services in or from Seychelles.

The Bill also prohibits legal persons from carrying on business using virtual assets in or from Seychelles without being licensed under the Bill. Therefore, if a VASP is providing virtual asset services to persons in Seychelles, even if operating from offshore, they are considered to be carrying on business using virtual assets in Seychelles and must be licensed. Failure to do so would be an offence and is liable to a fine not exceeding US$ 350,000 or to imprisonment for a term not exceeding 15 years or both.

What are the main requirements for obtaining licensing / registration as a VASP in Seychelles?

The Virtual Asset Service Providers Bill, 2023 provides the regulatory framework for the licensing and supervision of legal persons conducting business using virtual assets in and from Seychelles. To obtain a VASP license in Seychelles, the following main requirements must be met:

1. The VASP must apply for a license to the Authority in the approved form.
2. The licensee shall pay the annual license fee.
3. The licensee shall conduct the permissible activities listed under the First Schedule.
4. The licensee and directors and principal officers of the applicant must be considered fit and proper with the necessary skills, knowledge, and experience.
5. The VASP must have physical substance in Seychelles.
6. The VASP must have books, records, and adequate accounting systems.
7. The VASP must have adequate capital and solvency requirements, cybersecurity measures, and meet specific requirements for permissible activities.
8. The VASP must have custody and protection of client assets and maintain an indemnity insurance for the benefit of its clients.
9. The VASP must have policies and procedures satisfactory to the Authority to avoid, mitigate, and deal with conflicts of interest.
10. The licensee shall cause to be prepared annual audited financial statements as required by the Bill.

Any legal person conducting virtual asset services shall be considered as a virtual asset service provider, including an overseas company or an international business company incorporated or continued or converted under the International Business Companies Act 2016.

What are the main ongoing requirements for VASPs regulated in Seychelles?

VASPs regulated under the Virtual Asset Service Providers Bill, 2023 are subject to several ongoing requirements. Some of the main requirements are:

1. *Annual License Fee*: VASPs must pay an annual license fee to the Authority by or before the 31st of January of each year after the initial license issue.
2. *Annual audited financial statements*: VASPs must prepare and cause to be audited annual audited financial statements in respect of all transactions and balances relating to its business.
3. *Fit and Proper Assessment*: VASPs must continue to meet the fitness and propriety assessment criteria set out in the Bill for the duration of their license.
4. *Substance in Seychelles*: VASPs must ensure that they have physical substance in Seychelles, which means an actual presence in Seychelles that fulfills certain requirements, as specified in the Bill.
5. *Compliance Form*: VASPs must submit a compliance form to the Authority disclosing the VASP's compliance status.
6. *Cyber Security Report*: A cyber security report must be submitted by a designated staff member relating to the measures and compliance of the VASP's cybersecurity measures and controls.
7. *Record Keeping*: VASPs must maintain adequate books and records in accordance with international best practices for a period not less than 10 years from the termination of the business relationship with the client concerned.
8. *Adherence to AML and CFT regulations*: VASPs must comply with the Anti-Money Laundering and Combating the Financing of Terrorism regulations specified by the Seychelles government to prevent criminal activities such as money laundering and terrorist financing.

Failure to comply with any of these requirements may result in penalties, revocation of license, suspension of license, or other enforcement actions.

What are the main restrictions on VASPs in Seychelles?

VASPs in Seychelles are subject to regulation and supervision by the FSA. VASPs must comply with the AML/CFT Act and licensing rules in Seychelles. Also, they are required to have measures in place to reduce crime and other unlawful activities related to financial services business.

The Virtual Asset Service Providers Bill, 2023, imposes several restrictions on VASPs operating in Seychelles. Below are some of the important ones:

1. *Registration and licensing*: The Seychelles Virtual Asset Service Providers Bill requires VASPs to obtain a Virtual Asset Service Provider license from the FSA to operate in Seychelles. To obtain this license, VASPs must submit a license application, undergo a 'fit and proper' assessment, and pay an annual license fee.
2. *Prohibited activities*: The Bill prohibits VASPs from providing certain activities such as payment services, causing instruments to be converted into NFT, issuing ICOs, or causing ICOs to be issued, without being registered with the FSA.
3. *Conducting business in Seychelles*: VASPs must conduct their business from Seychelles by having a physical office with qualified staff. They must also undertake client onboarding, complaint handling, and management meetings in Seychelles.
4. *Custody and protection of client assets*: Licensees holding client assets must maintain an indemnity insurance for the benefit of their clients in a form and amount acceptable to the FSA for the protection of clients' assets.
5. *Material changes to business*: Licensees must obtain authorisation from the FSA before making material changes to their business.
6. *Filing of reports*: VASPs must file an annual audited financial statement, an annual declaration, and a cyber-security report compiled in accordance with stipulated guidelines.
7. *Compliance*: Licensees must comply with legislative requirements and regulatory codes issued by the FSA.
8. *Risk assessment*: VASPs must undergo a comprehensive risk assessment.

These restrictions ensure that Seychelles' regulatory regime is robust in curbing illicit activities in the Virtual Asset Service Provider landscape while making it possible for genuine VASPs to operate legally in Seychelles.

What are the main information that VASPs have to make available to its customers?

According to the Virtual Asset Service Providers Bill, 2023, a licensed VASP in Seychelles is required to make the following information available to its customers:

1. Its legal name
2. Its registered office or the office where it operates in Seychelles
3. The name(s) of the principal(s) and the contact details of the principal(s)
4. If it has a website, the internet address of the website
5. Its license number and date of issue when conducting virtual asset services in Seychelles
6. The permissible activities in which it is authorised to engage
7. The currencies it will accept for payment

8. The terms and conditions of its virtual asset services, including the costs and fees that may be charged
9. The arrangements that put in place to safeguard the client's virtual asset, including the segregation of the client assets from the operator's own assets
10. The procedures for resolving disputes arising from virtual asset services provided by the VASP
11. The client's right to seek compensation from the VASP if they suffer loss arising from the virtual asset services provided by the VASP

In addition to these requirements, the VASP should comply with other obligations, including anti-money laundering and combating terrorism financing measures, cybersecurity policies, and financial and auditing obligations.

What market misconduct legislation/regulations apply to virtual assets?

In Seychelles, there is no specific market misconduct legislation or regulations that apply only to virtual assets. However, virtual assets are subject to general laws and regulations that govern financial markets and prohibit market misconduct. The main laws and regulations that apply to virtual assets in Seychelles and prohibit market misconduct include:

1. *Securities Act, 2007*: The Securities Act regulates the issuance, trading, and offering of securities in Seychelles. While virtual assets are not explicitly mentioned in the Act, the FSA has indicated that certain virtual assets may be considered securities and subject to the Act's requirements.
2. *Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020*: The AML/CFT Act requires VASPs to implement adequate measures to prevent money laundering and terrorist financing, including customer due diligence, transaction monitoring, and suspicious activity reporting.
3. *Penal Code*: The Penal Code prohibits various forms of market misconduct, such as fraud, insider trading, and market manipulation. These offenses may apply to virtual assets if they are considered securities or other financial instruments.
4. *Consumer Protection Act, 2014*: The Consumer Protection Act prohibits false or misleading advertising, deceptive business practices, and unfair contract terms. VASPs that offer virtual asset services to consumers must comply with these requirements.

4. Regulation of other crypto-related activities in Seychelles

Are managers of crypto funds regulated in Seychelles?

As of the present legislation in Seychelles, managers of crypto funds are not explicitly regulated under a specific framework designed for virtual assets or cryptocurrencies. The

existing regulatory framework primarily focuses on traditional financial services and securities.

However, depending on the structure and nature of the crypto fund, it may fall under the regulatory purview of the FSA or other relevant authorities. For instance, if a crypto fund is structured as a collective investment scheme, it may be subject to regulation under the Securities Act, 2007, or the Mutual Fund and Hedge Fund Act, 2008. In such cases, the fund manager may be required to obtain a license from the FSA.

It is important to note that the FSA has been working on developing a more comprehensive regulatory environment for virtual assets, including the proposed Virtual Asset Service Providers (**VASP**) Bill. Once enacted, this legislation may have implications for the regulation of crypto fund managers in Seychelles.

Are distributors of virtual asset funds regulated in Seychelles?

As of the present legislation in Seychelles, distributors of virtual asset funds are not explicitly regulated under a specific framework designed for virtual assets or cryptocurrencies.

However, depending on the structure and nature of the virtual asset fund and the activities carried out by the distributor, they may fall under the regulatory purview of the Seychelles FSA or other relevant authorities. For instance, if a virtual asset fund is structured as a collective investment scheme, it may be subject to regulation under the Securities Act, 2007, or the Mutual Fund and Hedge Fund Act, 2008. In such cases, the distributor may be required to obtain a license from the FSA.

The FSA has been working on developing a more comprehensive regulatory environment for virtual assets, including the proposed Seychelles VASP Bill. Once enacted, this legislation may have implications for the regulation of distributors of virtual asset funds in Seychelles. The Bill primarily focuses on regulating virtual asset service providers, which include exchange platforms, custodial services, and transfer services. While the bill does not explicitly mention distributors of virtual asset funds, it is possible that they may be indirectly affected by the new regulations or be subject to future amendments or guidelines specifically addressing their activities.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Seychelles?

As of the present legislation in Seychelles, there are no specific requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets.

However, depending on the nature of the services provided by the intermediary and the structure of the virtual assets involved, they may fall under the regulatory purview of the Seychelles FSA or other relevant authorities. For instance, if the intermediary offers services related to securities or collective investment schemes, it may be subject to regulation under the Securities Act, 2007, or the Mutual Fund and Hedge Fund Act, 2008. In such cases, the intermediary may be required to obtain a license from the FSA.

The FSA has been working on developing a more comprehensive regulatory environment for virtual assets, including the proposed Seychelles VASP Bill. Once enacted, this legislation may have implications for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Seychelles. The VASP Bill primarily focuses on regulating virtual asset service providers, which include exchange platforms, custodial services, and transfer services. While the bill does not explicitly mention intermediaries, it is possible that they may be indirectly affected by the new regulations or be subject to future amendments or guidelines specifically addressing their activities.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in Seychelles?

Yes, there are upcoming regulatory developments in respect of crypto-related activity in Seychelles. The Seychelles FSA has been working on developing a more comprehensive regulatory environment for virtual assets, including cryptocurrencies.

One of the key upcoming regulatory developments is the Seychelles VASP Bill. The VASP Bill aims to regulate virtual asset service providers, which include exchange platforms, custodial services, and transfer services. The bill sets out licensing requirements, AML/CFT measures, and other obligations for entities engaged in virtual asset activities. Once enacted, the VASP Bill will provide a more comprehensive regulatory framework for crypto-related activities in Seychelles.

The FSA has also been working on increasing its oversight and enforcement activities related to virtual assets. In recent years, the FSA has issued warnings to investors regarding the risks associated with virtual assets and ICOs. The authority has also been conducting checks and due diligence on various entities claiming to be registered or licensed in Seychelles but operating without proper authorisation.

Has there been any notable events in Seychelles that has prompted regulatory change recently?

Recent events that have prompted regulatory change in Seychelles include the collapse of the Seychelles-based cryptocurrency exchange, African Digital Asset Framework (**ADAF**), in 2019, which resulted in significant losses for investors.

In addition to the specific incident, the Seychelles FSA discovered that numerous service providers were falsely claiming to possess a crypto license for various crypto-related services. In reality, these entities were operating without proper authorisation.

These incidents highlighted the need for greater regulatory oversight of virtual asset activities in Seychelles. In response, the FSA issued a warning to investors to maintain caution and announced that it was working on developing a regulatory framework for virtual assets and VASPs. The proposed framework aims to provide clarity and certainty for

businesses operating in the virtual asset space, while also ensuring appropriate safeguards are in place to protect investors and prevent illicit activities.

6. Pending litigation and judgments related to virtual assets in Seychelles (if any)

There are currently no pending litigations or judgments in Seychelles.Top of Form

7. Government outlook on virtual assets and crypto-related activities in Seychelles

The government of Seychelles has shown a favorable outlook towards virtual assets and crypto-related activities, recognising the potential benefits they can bring to the country's economy.

In terms of present legislation, the Seychelles FSA has been monitoring virtual asset activities and has issued warnings to investors regarding the risks associated with virtual assets and ICOs. The FSA has also been conducting checks and due diligence on various entities claiming to be registered or licensed in Seychelles but operating without proper authorisation. This demonstrates the government's commitment to maintaining a secure and regulated financial environment while allowing the virtual asset industry to develop.

Regarding proposed legislation, the Seychelles VASP Bill is a significant step towards creating a more comprehensive regulatory framework for virtual assets in Seychelles. The VASP Bill aims to regulate virtual asset service providers, including exchange platforms, custodial services, and transfer services. By setting out licensing requirements, AML/CFT measures, and other obligations, the government seeks to establish a clear regulatory environment for crypto-related activities.

8. Advantages of setting up a VASP in Seychelles

Seychelles has a relatively light-touch regulatory approach to virtual assets and VASPs, which can provide businesses with greater flexibility and autonomy. While the FSA is responsible for regulating virtual assets and VASPs in Seychelles, the regulatory framework is still under development, and businesses may benefit from a more permissive regulatory environment in the short term.

The country's strategic location and increasing investments in the cryptocurrency industry make it an advantageous choice for those considering a virtual assets business. The country has become a hub for crypto companies due to its business-friendly policies and tax structure. Approximately 20% of global crypto exchanges are registered in Seychelles, including well-known players like HTX, BitMEX, and KuCoin. The attractive tax system is a major advantage, with income tax ranging from zero to 30%, lower than the global average. Corporate taxes are reasonable, with no capital gains or inheritance taxes. This makes Seychelles appealing for companies looking to benefit from favorable tax policies.

Furthermore, setting up a VASP in Seychelles can be cost-effective compared to other jurisdictions. The country has relatively low registration and licensing fees, and the cost of living and doing business is relatively low compared to other offshore jurisdictions.

February 2024

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Hong Kong

1. Hong Kong regulation of virtual asset trading platforms

Hong Kong's licensing regime for virtual asset trading platforms, includes provisions setting out:

1. the scope of activities that need to be licensed;
2. the eligibility criteria for licensingand the ongoing obligations of, and restrictions on the activities of platforms once they become licensed; and
3. certain statutory offences relating to misconduct involving virtual assets.

Licensing regimes for VATPs

Hong Kong has two licensing regimes governing trading platforms. Under Part 5B of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (the **AMLO**) which came into effect on 1 June 2023, platforms that offer trading in virtual assets that are not securities within the definition of securities set out in Schedule 1 to the Securities and Futures Ordinance (the **SFO**), for example Bitcoin, must be licensed by the SFC. Platforms that provide trading in virtual assets that are securities under the SFO, on the other hand, need to be licensed under the SFO for regulated activities Type 1, that is dealing in securities, and Type 7, providing automated trading services.

Given the possibility of a virtual asset's regulatory classification changing from a non-security to a security and vice versa, the SFC encourages virtual asset trading platforms and their relevant employees to apply for licences under both Ordinances.

Applicants for dual licensing can submit a single consolidated application online through the SFC's WINGs platform indicating that they are simultaneously applying for both licences. According to the SFC's website, there are currently 10 Hong Kong licensed virtual asset

trading platforms. The SFC announced a "swift" licensing process and revamped external assessment requirements in a circular issued on 16 January 2025.

Financial action task force requirements

The implementation of the AMLO licensing regime means that Hong Kong now complies with certain requirements of the Financial Action Task Force (**FATF**), which is the international anti-money laundering watchdog. Under FATF's Interpretative note to FATF Recommendation 15, FATF member jurisdictions, which include Hong Kong, should require virtual asset service providers, commonly referred to as VASPs, to be licensed or registered by a competent authority which must regulate VASPs in relation to anti-money laundering and counter-terrorist financing and monitor their compliance with AML and CTF regulations. FATF also requires countries to apply the so-called "Travel Rule" to virtual asset transfers. This requires originating VASPs to obtain and hold accurate required originator information and required beneficiary information on virtual asset transfers and to submit that information to any beneficiary VASP or financial institution, and make it available on request to appropriate authorities. FATF compliance was one of the drivers behind Hong Kong's implementation of its regulatory regime for virtual asset trading platforms: non-compliance would risk Hong Kong being placed on the FATF's grey list of non-compliant jurisdictions.

The implementation of Hong Kong's licensing regime also aligns with the Hong Kong Government's stated objective of developing Hong Kong as an international hub for Web3 and virtual assets. In April 2023, ahead of the implementation of the AMLO licensing regime, the Hong Kong Monetary Authority issued a circular to Hong Kong's banks urging them to provide banking services to SFC-licensed virtual asset trading platforms to support what it described as "their legitimate need for bank accounts". This was seen as a move aimed at supporting the Government's objectives and countering banks' reluctance to open bank accounts for crypto-related businesses. The requirements for licensing virtual asset trading platforms are however stringent and licensed platforms are subject to various continuing obligations, including additional obligations for platforms serving retail investors and individual professional investors.

Hong Kong's implementation of a regulatory regime for crypto exchanges is also viewed as having created a degree of regulatory clarity. The SFC has taken a number of initiatives to try and improve investors' understanding of the risks associated with trading on unregulated platforms in the wake of the scandal involving unlicensed trading platform JPEX. The actions of the Hong Kong police force in arresting a number of individuals involved came as a signal that action would be taken against anyone who breaches the regulatory regime. It seems that a primary aim of the enforcement action was to prevent the JPEX case from damaging Hong Kong's ambitions as an international crypto hub. Hong Kong's desire to establish itself as a crypto hub is part of the Government's wider efforts to restore the city's credentials as a cutting-edge financial centre, which was challenged to a degree in recent years by pandemic-related restrictions and social unrest. Financial Secretary, Paul Chan, referred to virtual assets as "unstoppable new financial innovations" that Hong Kong needs to embrace while the HKMA's Fintech Promotion Roadmap sets out its vision of "bolstering Hong Kong's

position as a leading global financial centre offering world-class digitally enabled products and services".

AMLO licensing requirements

According to the licensing regime under the AMLO, an entity is required to be licensed if it carries on a business of providing a virtual asset service, which the AMLO refers to as a 'VA service', in Hong Kong, or holds itself out as doing so. Licensing under the AMLO is also required for an offshore entity to actively market, either itself or through another person, to the Hong Kong public any service that it provides outside Hong Kong which would be a VA service if it were provided in Hong Kong. Thus an offshore entity that actively markets to the Hong Kong public a VA service that it provides offshore, is required to be licensed. The relevant provision, section 53ZRB(3) of the AMLO, is the equivalent of section 115 of the SFO which applies to securities. In practice, however, the SFC will not license offshore entities since they fall beyond its regulatory remit. The provision therefore operates to prohibit any offshore VA trading platform from actively marketing its VA trading services to the Hong Kong public. Failure to comply with the AMLO's licensing requirements is an offence which carries maximum penalties of 7 years' imprisonment, a HK$5 million fine, and a daily fine of HK$100,000 for continuing offences.

SFC FAQ on active marketing

As to what amounts to "active marketing" for the purposes of section 53ZRD, the SFC's FAQ states that examples of "active marketing" include frequently calling on Hong Kong investors to market services, including offering products, and mass media programmes and internet activities targeting Hong Kong investors. The FAQ lists various non-exhaustive factors it will consider in determining whether services are actively marketed to the Hong Kong public. These include: whether there is a detailed plan to promote the services; whether the services are extensively advertised using direct mailing, advertisements in local newspapers or broadcasting, or "push" technology over the Internet; and whether the services are packaged to target the Hong Kong public, for example by being written in Chinese and denominated in Hong Kong dollars. However, we need to be cautious in relying on that interpretation since the SFC argued against its own interpretation in the case of Ng Chiu Mui v the SFC when it asserted the term meant "*no more than marketing in the primary sense of pro-actively advertising the service to the Hong Kong public*". The meaning of the term "*active marketing*" was not determined in the case since the services had been extensively advertised in local newspapers.

Providing a VA service business

Section 53ZRD of the AMLO defines "a business of providing any VA service" as "operating a VA exchange", which is in turn defined as providing services through means of electronic facilities whereby:

1. offers to sell or purchase virtual assets are regularly made or accepted in a way that forms or results in a binding transaction; or

2. persons are regularly introduced, or identified to other persons in order that they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude sales or purchases of virtual assets in a way that forms or results in a binding transaction.

The licensing regime thus applies to virtual asset trading platforms that operate in Hong Kong, or whose offshore services are actively marketed to the Hong Kong public. The SFC has said that the VATP licensing regime applies only to centralised VA trading platforms that provide virtual asset trading services to clients using an automated trading engine that matches client orders and also provide custody services as an ancillary service to their trading services. The provision of virtual asset services without an automated trading engine and ancillary custody services, for instance, over-the-counter virtual asset trading activities and virtual asset brokerage activities, does not require a licence. The Hong Kong licensing regime thus only covers centralised crypto exchanges. It is worth noting that the scope of regulation is narrower than required under the FATF recommendations, under which the businesses that are required to be licensed or registered as VASPs also include businesses that are involved in the safekeeping of virtual assets or instruments creating control over virtual assets, i.e., cryptographic keys. This would require the licensing of crypto custodians and custodians of cryptographic keys. The FATF VASP definition also covers businesses involved in the transfer of virtual assets such as virtual asset payment businesses. When the consultation on the AMLO regime was conducted, the Financial Services and Treasury Bureau explained that it had decided to only regulate crypto exchanges as they were the predominant crypto-related businesses in Hong Kong. The number of stand-alone crypto custodian and crypto payment businesses in Hong Kong at the time was negligible.

However, the AMLO gives the Secretary for Financial Services and the Treasury the power to amend the definition of "VA service" by notice published in the Gazette. The Government may therefore choose to extend the scope of the licensing regime in the future if it sees fit. Moreover, the SFC's regulatory roadmap for Hong Kong's virtual asset market published in February 2025 set out its plans to introduce new licensing regimes for providers of over-the-counter spot trading in virtual assets and virtual asset custodians. Other important initiatives include the SFC's plans to allow SFC-licensed virtual asset exchanges to offer trading in virtual asset derivatives and ICO tokens for professional investors only, subject to stringent due diligence and disclosure requirements. The SFC is additionally considering permitting virtual asset staking and borrowing and lending for professional investors which will be subject to strict requirements governing the custody of client assets and robust risk management measures.

Virtual assets definition

'Virtual assets' are defined in section 53ZRA of the AMLO. There are three strands to the definition. First, the virtual asset must be a cryptographically secured digital representation of value that is expressed as a unit of account or a store of economic value. Secondly, the virtual asset must either be used, or intended to be used, as a medium of exchange accepted by the public for the payment for goods or services, for the discharge of a debt and/or for investment, or must provide rights, eligibility or access to vote on the

management, administration or governance of the affairs in connection with, or to vote on any change of the terms of any arrangement applicable to, any cryptographically secured digital representation of value.

The third strand of the definition is that the virtual asset must be transferred, stored or traded electronically.

This definition includes Bitcoin, altcoins and stablecoins, although, the SFC has stated that stablecoins should not be admitted for trading by retail investors until they are regulated in Hong Kong on the implementation of the Stablecoins Bill.

Exclusions from virtual assets definition

There are a number of specific exclusions from the virtual asset definition. It excludes: digital representations of fiat currencies; central bank digital currencies; financial assets already regulated under the SFO such as securities and futures contracts; and stored value facilities which are separately regulated under the Payment Systems and Stored Value Facilities Ordinance. The definition also excludes "limited purpose digital tokens" which include non-transferable, non-exchangeable and non-fungible closed-loop, limited purpose items, such as air miles, credit card rewards, gift cards, customer loyalty programmes and gaming coins.

SFO licensing

As to the licensing regime under the SFO, virtual asset trading platforms that provide trading in virtual assets that are securities within the SFO definition and provide automated traded services in those virtual assets, or hold themselves out as doing so, need to be licensed under the SFO for regulated activities Type 1, dealing in securities, and Type 7, providing automated trading services. As is the case for the AMLO licensing regime, the SFC has indicated that licensing is required only for centralised virtual asset trading platforms, i.e., trading platforms that provide trading, clearing and settlement services for virtual assets and have control of clients' assets. The SFC does not license platforms which provide peer-to-peer trading in virtual assets between clients where the trades take place off-exchange and the clients retain custody of their virtual assets. As is the case under the AMLO, the SFO also prohibits an offshore entity from actively marketing to the Hong Kong public any services it offers offshore that would constitute SFO-regulated activities if they were provided in Hong Kong under section 115 of the SFO. That prohibition applies whether the offshore entity conducts the active marketing itself or through another person and whether the active marketing is conducted from offshore or in Hong Kong. The provision means that offshore virtual asset trading platforms cannot actively market their offshore services to the Hong Kong public. What constitutes "active marketing" is the same under the AMLO and the SFO.

Regulatory requirements for licensed VATP operators

While the AMLO and SFO set out the key regulatory provisions for VA trading platforms, the detailed obligations and requirements are set out in various SFC codes, guidelines and

frequently asked questions (FAQs). Many of the detailed obligations on VA trading platforms are set out in the SFC's Guidelines for Virtual Asset Trading Platform Operators or VATP Guidelines.

The SFC has also issued a Guideline on Anti-Money Laundering and Counter- Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) and a Prevention of Money Laundering and Terrorist Financing Guideline for Associated Entities of Licensed Corporations and SFC- licensed Virtual Asset Service Providers, as well as FAQs on licensing matters and on conduct-related matters.

Eligibility for licensing under AMLO & SFO

As regards the eligibility requirements for licensing, Hong Kong incorporated companies that have a permanent place of business in Hong Kong, and overseas companies that are registered in Hong Kong under the Hong Kong Companies Ordinance, are eligible for licensing under the AMLO and SFO licensing regimes. Businesses that do not have a separate legal personality, such as partnerships and sole traders, individuals and overseas companies that are not registered in Hong Kong, are not eligible to be licensed as VA trading platforms.

Platform operators' fitness & properness

An entity applying to be licensed must be "fit and proper" which means that it must not be subject to any receivership, administration, liquidation or other similar proceedings; have failed to meet any judgment debt; or be unable to meet any financial or capital requirements that apply to it.

Platform operators' financial resources requirements

The VATP Guidelines set out financial resources requirements that licensed platform operators must meet on a continuing basis. First, they must have at least HK$5 million of paid-up share capital and liquid capital of the higher of HK$3 million and the "basic amount" as defined in Division 2 of Part 4 of the Securities and Futures (Financial Resources) Rules. They are also required to beneficially own assets that are sufficiently liquid, such as cash, deposits, treasury bills and certificates of deposit, but not virtual assets, that are equivalent to at least 12 months of their actual operating expenses calculated on a rolling basis.

Platform operators' competency requirements

The SFC also needs to be satisfied as to the competency of the VA trading platform operator and will consider various key elements including its business model, corporate governance, internal controls, operational review, risk management and compliance, in addition to the combined competence of its senior management and other staff members.

A licence applicant will need to have a clear business model, detailing its modus operandi and target clientele, as well as written policies and procedures to ensure continuous compliance with the relevant legal and regulatory requirements. The applicant has to demonstrate to the SFC that it has a proper business structure, good internal control

systems and qualified personnel to ensure the proper management of the risks it will encounter carrying on its proposed business as detailed in its business plan. Licensing applicants need to include detailed information on these points in their business plan, compliance manual and other internal policies and procedures.

Responsible officer requirements

Platform operators are required to appoint a minimum of two responsible officers to supervise their licensed business, who must be approved by the SFC. The main requirements for responsible officers are that at least one responsible officer must also be an executive director of the company and, if the company has more than one executive director, they must all be appointed as responsible officers. In addition, at least one responsible officer must be ordinarily resident in Hong Kong and at least one responsible officer must be available at all times to supervise each regulated activity or business.

Where a platform is dual-licensed under the AMLO and SFO, it is required to have two, rather than four, dually-licensed responsible officers to meet the minimum statutory requirement for two responsible officers under each Ordinance.

The SFC states in its Licensing Handbook for VATP operators that it will only license overseas residents if they will come to Hong Kong to conduct regulated activities on behalf of a licensed platform operator to which they are accredited. It will not license individuals who only conduct business activities outside Hong Kong. If a responsible officer will be stationed overseas, and will visit Hong Kong from time-to-time to conduct regulated activities, the SFC will impose a non-sole condition on the responsible officer's licence. The non-sole condition means that when the responsible officer actively participates in or supervises the platform's licensed business, they must do so under the advice of another responsible officer who is not subject to the non-sole condition. However, itinerant professionals who will only spend short periods in Hong Kong for specific purposes should not be appointed as responsible officers because this is incompatible with their responsibilities for supervising the virtual asset trading platform's business. The SFC has also said that responsible officers must participate in supervising the platform's regulated activities and that licensed platforms should not hire individuals who act as responsible officers in name only and have no real supervisory role.

Responsible officers' fitness and properness

Responsible officers need to be fit and proper persons to act in this capacity. The factors relevant to the SFC's assessment of an individual's fitness and properness to be a responsible officer include:

1. their financial status and solvency;
2. their educational or other qualifications and experience; and
3. their ability to carry on regulated activities competently, honestly and fairly; and
4. their reputation, character, reliability and financial integrity.

The SFC will also take into account a person's convictions for offences under the AMLO, the United Nations (Anti-Terrorism Measures) Ordinance, the Drug Trafficking (Recovery of Proceeds) Ordinance or the Organized and Serious Crimes Ordinance and comparable offshore convictions, as well a person's previous breaches of the AMLO.

Responsible officers' educational qualifications and experience

The SFC's VATP Guidelines set out the SFC's requirements in terms of responsible officers' academic or professional qualifications, relevant industry experience, recognised industry qualifications, management experience and the Hong Kong Securities Institute papers they are required to have passed. There are three routes to meeting these requirements. If a person has a relevant university degree, that is a degree in accounting, business administration, economics, finance or law, or internationally-recognised professional qualifications in those subjects, they must also have at least 3 years' direct relevant industry experience acquired in the previous 6 years; 2 years' management experience and have passed Hong Kong Securities Institute Papers 1 and 2. Secondly, individuals who have degrees in other subjects are required to have at least 3 years' direct relevant industry experience over the previous 6 years, 2 years' management experience, have passed HKSI papers 1 and 2, and have either passed Hong Kong Securities Institute papers 7 and 8, or completed an additional 5 hours of continuous professional training within the 6 months before they apply to be licensed.

The last route is for individuals who have attained Level 2 in either English or Chinese and Maths in the Hong Kong Diploma of Secondary Education Exams or equivalent overseas qualifications. These individuals are required to have 2 years' management experience and to have passed Hong Kong Securities Institute Papers 1 and 2. They also need direct relevant industry experience of 3 years over the previous 6 years or 5 years over the previous 8 years. They additionally need to have passed Hong Kong Securities Institute papers 7 and 8, or have completed an additional 5 hours of continuous professional training in the 6 months before they apply to be licensed.

Responsible officers' industry experience

The SFC will recognise an individual's industry experience as direct relevant industry experience if they were a key person involved in the development, or in ensuring the proper functioning of, a technology, platform or system that is central to the virtual asset trading platform for which the person will be a responsible officer. Merely providing system support, on the other hand, will not be recognised as relevant industry experience.

Where a responsible officer applicant's industry experience largely relates to non-security virtual assets and the person has no experience of dealing in securities, or vice versa, the SFC has said that it is prepared to be flexible given that this is a new industry. In other words, the SFC will consider industry experience dealing in non-security virtual assets as industry experience relevant to Type 1 dealing in securities regulated activity under the SFO, although it will impose a licensing condition on the person's Type 1 licence that they can only provide Type 1 regulated activity services for the business of an SFC-licensed platform operator. Likewise, it will recognise industry experience of dealing in securities as industry

experience relevant to providing a VA service under the AMLO, but will impose a "non-sole" condition on the responsible officer's licence to provide a VA service.

This arrangement is intended as a temporary measure and has been adopted for pragmatic reasons due to a lack of talent with both virtual asset and securities-related experience at this early stage. The SFC will review whether this provision needs to be retained as the market develops.

In terms of what the SFC will recognise as "management experience", this needs to be "hands on" experience of supervising and managing the business' regulated functions in a business setting. Managing the platform's staff who conduct the regulated functions or engage in its projects can also be regarded as "management experience". Under the VATP Guidelines, the SFC will also accept management experience gained in the financial industry, unless it is purely administrative, for example involving human resources or office administration.

Licensed representatives

Individuals who will provide regulated services on behalf of a VA trading platform, including its responsible officers, need to be licensed by the SFC as licensed representatives accredited to the VA trading platform. In practice, licensed representative and responsible officer applications can be submitted simultaneously.

Licensed representatives can only act for the platform operator to which they are accredited for conducting regulated activities. If a licensed representative ceases to act for their principal, the principal must notify the SFC through WINGS within 7 business days. The licensed representative can then apply for a transfer of their accreditation to another platform operator within 180 days. If a licensed representative has previously received a regulatory warning, this must be disclosed in the application form.

Licensed representatives required educational qualifications & experience

The SFC expects individuals applying to be licensed representatives to have a basic understanding of the market and of the relevant legal and regulatory requirements. There are also three different routes to licensing. An individual with a relevant degree or professional qualification only needs to have passed HK Securities Institute Paper 1. Individuals with other degrees need to have passed Paper 1 and have at least 2 years' relevant industry experience over the past 5 years, or have either passed Hong Kong Securities Institute papers 7 and 8 or completed an additional 5 hours of continuous professional training within the 6 months before they apply to be licensed. The third route to licensing requires individuals with Level 2 in English or Chinese and Maths in the Hong Kong Diploma of Secondary Education Exams or equivalent to have passed HK Securities Institute Paper 1 and have 2 years' of direct relevant industry experience over the previous 5 years. They also need to have completed 5 additional continuous professional training hours in the 6 months before applying for licensing, or have passed Hong Kong Securities Institute papers 7 and 8.

Substantial shareholders and ultimate owners

The substantial shareholders and ultimate owners of a VA trading platform operator are also required to be fit and proper and must be approved in writing by the SFC. A "substantial shareholder" is a person who has an interest of 10% or more in the platform operator's issued shares or a person with an interest in the platform operator's shares which entitles them, either alone or with their associates, to control the exercise, directly or indirectly, of 10% or more of the voting power at its general meetings. A person will also be a substantial shareholder of a VA trading platform operator if they hold shares in another company which entitles them, alone or with their associates, to control the exercise of 35% or more of the voting power at general meetings of that company, or of a further company, which can exercise, either alone or with its associates, 10% of the voting power at general meetings of the platform operator.

An "ultimate owner" is an individual who owns or controls more than 25% of the issued share capital of the VA trading platform operator; controls more than 25% of the voting rights at its general meetings; or controls its management.

SFC approval of a VATP's ultimate owner

The factors that the SFC takes into consideration in determining whether a VA trading platform's ultimate owner is fit and proper include:

1. its financial status or solvency, educational or other qualifications and experience;
2. evidence of their competence, honesty and financial integrity;
3. their conviction in Hong Kong or elsewhere for any money laundering or terrorist financing offence or other offence involving fraudulent, corrupt or dishonest conduct; and
4. failure to comply with the AML/CTF obligations or other obligations of licensed VA trading platforms.

Any person who proposes to become an ultimate owner of a licensed VA trading platform must be approved in writing by the SFC. The SFC needs to be satisfied that the platform will continue to be fit and proper if the ultimate owner is approved. In granting its approval, the SFC can impose conditions on the licensed trading platform or the ultimate owner. A person who becomes the ultimate owner of a VA trading platform without the SFC's approval, without a reasonable excuse, will commit an offence for which the maximum penalty is a HK$1 million fine and two years' imprisonment and a further fine of HK$5,000 for every day that the offence continues.

Managers-in-charge of core functions (MICS)

The SFC has also introduced a Managers-In-Charge of Core Functions regime for licensed virtual asset trading platform operators, the details of which are set out in the SFC's FAQs on Measures for Augmenting Senior Management Accountability in Platform Operators, which are based on the manager in charge regime applicable to other SFC-licensed entities. The purpose of the regime is to implement the requirement for the trading platform's senior

management to assume primary responsibility for ensuring that the platform has appropriate standards of conduct and that those standards are adhered to. Licensed VA trading platform operators need to appoint one or more managers in charge as individuals who are principally responsible, either alone or with others, for managing each of the Platform Operator's "Core Functions".

There are eight Core functions. The first of these is Overall Management Oversight which involves responsibility for the day-to-day direction and oversight of the effective management of the platform operator's overall operations. The manager in charge of this function could for example be the trading platform's Chief Executive Officer or President. The person's main responsibilities include developing the platform operator's business model, objectives, strategies, organisational structure, controls and policies; developing and promoting sound corporate governance practices, culture and ethics; and executing and monitoring implementation of board-approved business objectives, strategies and plans, and the effectiveness of the organisational structure and controls.

The second Core Function is Key Business Line which involves directing and overseeing a line of business comprising one or more types of SFO-regulated activity and/or a VA service under the AMLO. The third of the core functions is Operational Control and Review which is responsible for the establishment and maintenance of adequate and effective systems of controls over the platform's operations and reviewing the platform operator's compliance with, and the adequacy and effectiveness of, its internal control systems. The fourth Core Function is Risk Management which involves responsibility for identifying, assessing, monitoring and reporting risks arising from the platform operator's operations. Examples of individuals who could perform the role are the Chief Risk Officer, or Head of Risk Management. The fifth Core Function is Finance and Accounting which involves responsibility for ensuring timely and accurate financial reporting and analyses of the platform operator's operational results and financial positions. The manager in charge could, for example, be the Chief Finance Officer, Financial Controller or Finance Director.

Sixth among the Core functions is Information Technology which relates to the design, development, operation and maintenance of the platform operator's computer systems. Compliance is the seventh core function and is responsible for setting policies and procedures for complying with the legal and regulatory requirements in the jurisdictions in which the platform operator operates; monitoring the platform operator's compliance with its policies and procedures; and reporting on compliance matters to the board and senior management. Anti-Money Laundering and Counter-Terrorist Financing is the eighth Core function and relates to establishing and maintaining internal control procedures to prevent the platform operator from being involved in money laundering or terrorist financing.

The managers in charge of the Overall Management Oversight and Key Business Line functions are generally required to be responsible officers of the activities they oversee. They can be located offshore provided they are accountable to the platform operator. The board of a licensed platform operator needs to ensure that each manager in charge acknowledges their appointment as manager in charge and the particular Core Function(s) for which they are primarily responsible. Any change in managers in charge must be notified to the SFC within seven business days of the change.

VATP complaints officer & emergency contact person

Virtual asset trading platform operators also have to appoint a Complaints Officer to deal with complaints made to the platform operator, and an emergency contact person to be contacted by the SFC in the case of a market emergency or other urgent matter. These individuals do not need to be licensed.

Applicants for licensing as a VA trading platform operator also have to obtain the SFC's approval of the premises they will use for keeping records or documents required to be kept under the Securities and Futures (Keeping of Records) Rules and the VATP Guidelines. The premises must be non-domestic premises which are suitable for storing the relevant documents and records. The SFC will normally only approve premises that are located in Hong Kong. One of the reasons for this is that a Hong Kong location is necessary to enable the SFC to exercise its power to enter premises to inspect a VA trading platform operator's records.

VATP licensing application process

To apply for licensing, applicants need to submit: Form 1 - the Corporation's Licence Application; Form 5 - the New Licence Application for Licensed Representatives and Responsible Officers for at least two proposed responsible officers; Questionnaire 1 – the General Business Profile and Internal Controls Summary; Questionnaire 2 for VA Trading Platform Operators; and the licence application fee. Application forms, supplements & questionnaires should be submitted to the SFC through WINGS-LIC.

In January 2025, the SFC published its "Circular to new virtual asset trading platforms seeking to be licensed - Enhanced licensing process and revamped external assessments" outlining a revamped licensing process and updated external assessment requirements for new corporations seeking a licence to operate a virtual asset trading platform. It replaces the Scope of External Assessment Reports issued in June 2023.

The new streamlined application process consists of the key stages outlined below as summarised in the diagram appended to the SFC circular.

1. Licence Application: The applicant for a virtual asset trading platform licence submits a licensing application bundle to the SFC through WINGS with:
    - 1.1 copies of its written policies and procedures;
    - 1.2 documents demonstrating that a suitable external assessor has been identified to perform an external assessment for the licence applicant, including a copy of the licence applicant's request for a proposal from the external assessor and the external assessor's indication of interest in performing the external assessment;2 and
    - 1.3 a capability statement for the external assessor.
2. SFC Assessment: The SFC assesses the application, including the virtual asset trading platform licence applicant's business structure, competence, and the fitness and properness of the applicant, its ultimate controller(s), ultimate owner(s), substantial shareholder(s), proposed responsible officer(s), and proposed Manager(s)-In-Charge, as

well as the capabilities of the proposed external assessor. Depending on the circumstances, the SFC may contest or express concerns about the choice of external assessor, or otherwise determine that the application is incomplete and/or has unresolved fundamental issues. In these cases, the SFC will return the application to the applicant with reasons for its decision.

3. Licence Applicant Deploys its Systems and Controls: Once the SFC accepts the application for a virtual asset trading platform licence, the applicant is required to deploy its systems and controls for ensuring compliance with the VATP Guidelines and AML/CFT Guidelines.
4. Virtual Asset Trading Platform Licence Applicant, External Assessor and SFC Sign Tripartite Agreement and the external assessor performs its assessment. The SFC expects most of the issues identified to be resolved during the external assessment process.
5. External Assessment Report is submitted to the SFC. If the SFC agrees with the external assessment report and all outstanding matters have been dealt with, the SFC will grant the virtual asset trading platform licence to the applicant.

External assessment report

Applicants for VA trading platform licences have to engage an external assessor to assess their policies, procedures, systems and controls. Under the new streamlined licensing process, the external assessor is required to submit just one assessment report to the SFC after the virtual asset trading platform licence applicant has implemented all necessary policies, procedures, systems and controls. According to the circular, the assessment is required to ensure that a VATP applicant's policies, procedures, systems and controls are suitably designed and implemented to meet the requirements of the SFC's Guidelines for Virtual Asset Trading Platform Operators (VATP Guidelines) and Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) (AML/CFT Guidelines).

The VA trading platform applicant should exercise due skill, care and diligence in selecting and appointing an external assessor. It should ensure that the external assessor (i) possesses adequate and necessary expertise, technical knowledge and relevant experience in reviewing and assessing the operations of the VA trading platform applicant, and (ii) thoroughly understands the legal and regulatory requirements for an SFC-licensed VA trading platform.

Submission of platform operators' bank account information

VA trading platform operators need to submit their bank account details to the SFC before their licensing application is approved. The HKMA issued a Circular to Hong Kong's banks in April 2023 urging them to provide banking services to SFC-licensed virtual asset trading platforms. Supporting the Hong Kong Government's push to become a global Web3 and crypto hub, the HKMA Circular urged banks to adopt "a forward looking approach … and

strengthen their understanding of new and developing sectors" and a risk-based approach, rather than "a wholesale de-risking approach".

The Circular also confirmed that the additional CDD measures for VATPs set out in the HKMA Circular "Regulatory Approaches to Authorized Institutions' Interface with Virtual Assets and Virtual Asset Service Providers" of 28 January 2022, apply only when banks offer correspondent services, for example an account to settle clients' transactions, to overseas VATPs. In other words, the additional CDD measures are not required for SFC-licensed VA trading platforms. It also stated that banks can consider opening an account once a VA trading platform applicant has received the SFC's "approval-in-principle" of its licence application, rather than insist on waiting until the actual grant of the licence.

SFC regulatory sandbox

According to the VATP Licensing Handbook and the SFC FAQs on the SFC Regulatory Sandbox, on becoming licensed, virtual asset trading platform operators will enter the SFC Regulatory Sandbox to allow the SFC to assess and monitor their delivery of services and internal controls systems. The SFC expects this to facilitate dialogue between the SFC and VA trading platform operators enabling platform operators to identify and address any risks arising from their activities.

If the SFC decides to refuse a licensing application, the applicant will be given the opportunity to be heard and the SFC will consider the applicant's representations before making a final decision. If the SFC then proceeds to refuse the application, the applicant has a right to apply for a review of its decision to the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal and the Securities and Futures Appeals Tribunal.

VATP licensing conditions

The licences of VA trading platform operators are granted subject to a number of licensing conditions. These include requirements that the platform operator must comply with the VATP Guidelines and must immediately notify the SFC and cease operating a VA trading platform if it becomes aware that it cannot maintain, or ascertain whether it maintains the required amounts of liquid capital and paid-up share capital.

The licensing conditions also require VA trading platforms to provide the SFC with monthly reports on their business activities within two weeks of the end of each calendar month and any other information requested by the SFC. Licensed platforms must also engage an independent professional firm acceptable to the SFC to conduct an annual review of their activities and operations, and prepare a report confirming that they have complied with the licensing conditions and all relevant legal and regulatory requirements. The first report must be submitted within 18 months of the approval of the platform operator's licence. Subsequent reports are required to be submitted within four months of the end of each financial year and upon request by the SFC.

Under the licensing conditions, VA trading platforms must obtain the SFC's written approval before introducing or offering a new or incidental service or activity or making a material

change to an existing service or activity, including the long suspension or termination of an existing service or activity.

The licensing conditions also restrict trading platforms to operating a centralised online virtual asset trading platform for trading of virtual assets on its platform and carrying on off-platform virtual asset trading business and incidental services provided by it to its clients and activities conducted in relation to that off-platform business.

Token admission and review committee requirements

SFC-licensed VA trading platform operators are required to set up a Token Admission and Review Committee which must be made up of members of senior management who are principally responsible for managing the key business line, compliance, risk management and information technology functions. The SFC expects members "principally responsible" for the various functions to include the corresponding managers-in-charge of the platform operator.

The responsibilities of the token admission and review committee include establishing, implementing and enforcing the criteria for admitting, suspending and withdrawing, virtual assets for or from trading and the rules containing the obligations and restrictions on virtual assets. The committee is also responsible for making the final decision as to whether to admit, suspend and withdraw a virtual asset for clients to trade based on the adopted criteria. These criteria and rules must be regularly reviewed by the committee. It must also report at least monthly to the board of directors of the VA trading platform operator and its reports must, at a minimum, include details of the virtual assets made available to retail clients for trading.

VATP obligations

Hong Kong licensed VA trading platform operators are required to monitor each of the virtual assets admitted for trading on an on-going basis and consider whether to continue to allow them for trading. Regular review reports are required to be submitted to the Token Admission and Review Committee. If the committee decides to suspend or withdraw a virtual asset from trading, the platform operator must notify clients as soon as practicable, inform clients holding that virtual asset of the options available, and ensure that clients are fairly treated.

Responsibility for conduct and adherence to procedural requirements

Under the VATP Guidelines, a trading platform's senior management is primarily responsible for ensuring that the trading platform and its associated entity have appropriate standards of conduct and procedures in place for their employees and that employees adhere to those standards and procedures. In particular, senior management is responsible for ensuring that effective policies and procedures are in place to identify and manage the risks associated with the business of the trading platform and its associated entity. The term

'senior management' refers to a platform operator's directors, responsible officers and Managers-in-Charge of Core Functions.

General token admission criteria

The SFC requires licensed VA trading platform operators to perform reasonable due diligence on all virtual assets, irrespective of whether they will be made available to retail clients, before admitting them for trading to ensure that they meet the token admission criteria established by their Token Admission and Review Committees. The non-exhaustive factors that platform operators must consider for all virtual assets include:

1. the background of the management or development team of the virtual asset or any of its known key members;
2. the regulatory status of the virtual asset in Hong Kong and whether its regulatory status would affect the platform operator's regulatory obligations;
3. supply and demand for the virtual asset and its maturity and liquidity, including the length of its track record period which must be at least 12 months for virtual assets that are not securities. This effectively prevents platforms from offering ICO tokens for trading. Other factors that VA trading platform operators have to consider are the technical aspects of the virtual asset;
4. its development and market and governance risks associated with it, and the legal risks associated with the virtual asset and its issuer.

Specific token admission criteria - "high liquidity" requirement

Hong Kong licensed VA trading platform operators intending to make virtual assets available for trading by retail investors must additionally ensure that the relevant virtual assets satisfy the specific token admission criteria set out in paragraphs 7.7 and 7.8 of the VATP Guidelines. 'Retail investors' are defined in the guidelines as persons other than professional investors as defined in the SFO and the Securities and Futures (Professional Investor) Rules.

The key requirement is that the relevant virtual asset must be "highly liquid". For a virtual asset to be considered "highly liquid", it must, at a minimum, be an "eligible large-cap virtual asset", i.e. a virtual asset that is included in a minimum of two acceptable indices issued by at least two independent index providers. An "acceptable index" is an index with a clearly defined objective to measure the performance of the largest virtual assets in the global market (for example, an index which measures the top 10 largest virtual assets) which is investible, which means that the constituent virtual assets must be sufficiently liquid, and objectively calculated and rules-based. The index providers must also have the necessary expertise and technical resources to construct, maintain and review the methodology and rules of the index, which need to be well-documented, consistent and transparent.

The two index providers have to be independent of each other, the virtual asset trading platform operator and the issuer of the virtual asset. In addition, at least one of the index providers must comply with the IOSCO Principles for Financial Benchmarks and have experience of publishing indices for the conventional securities market.

Noting that large market capitalisation does not necessarily correlate with high liquidity, the SFC has said that inclusion in two acceptable indices is a minimum criterion, rather than the sole criterion, for virtual assets to be eligible for trading by retail investors. Trading platform operators are therefore expected to conduct additional due diligence to ensure that eligible large-cap virtual assets admitted for retail trading are in fact highly liquid.

Trading platform operators are also required to ensure that a virtual asset to be admitted for retail trading is not a security (as defined in Part 1 of Schedule 1 to the SFO) except where the offering of the virtual asset to retail investors complies with the Hong Kong regulatory requirements for public offers of shares and debentures under the Companies (Winding Up and Miscellaneous Provisions) Ordinance and/or does not breach the restrictions on offers of investments under Part IV of the SFO.

The SFC's prior written approval is required for the admission of any virtual asset for trading by retail clients and the suspension of trading or removal of any such virtual asset.

If a licensed platform operator wants to make available for retail trading a virtual asset that fulfils the general token admission criteria, but not the specific token admission criteria, it can make a submission to the SFC which the SFC will consider on a case-by-case basis.

The SFC stated in its Consultation Conclusions that platforms should not admit stablecoins for retail trading until they are regulated in Hong Kong. The Hong Kong Monetary Authority proposed a new regulatory regime for various activities relating to payment-related stablecoins in its January 2023 Conclusion of its Discussion Paper on Crypto-assets and Stablecoins and on 6 December 2024, the Hong Kong SAR government published the Hong Kong Stablecoins Bill in the Hong Kong SAR Gazette which is currently waiting for its second reading in Legco.

Providing VA trading services to retail investors

SFC-licensed VA trading platform operators are allowed to provide services to retail investors provided that they comply with a number of investor protection measures covering client onboarding, platform governance, disclosure and token due diligence and admission.

Under the VATP Guidelines, platform operators have to implement a number of measures when serving investors other than institutional professional investors and qualified corporate professional investors.

Institutional professional investors are defined in paragraphs (a) to (i) of the definition of professional investors in Schedule 1 to the SFO.

Qualified corporate professional investors are corporate professional investors (that is a trust corporation, corporation or partnership within sections 4, 6 or 7 of the Securities and Futures (Professional Investor) Rules) which the licensed platform operator has assessed to meet certain criteria. The first of these criteria is that the corporate professional investor has an appropriate corporate structure and investment process and controls for making investment decisions. The second is that the persons making investment decisions on its behalf have sufficient investment experience, and the third criteria is that the corporate

professional investor is aware of the risks involved, which needs to be considered in terms of the persons who make investment decisions on its behalf.

The platform operator's assessment of whether a corporate professional investor is a qualified corporate professional investor must be in writing and the platform operator must keep records of all relevant information and documents obtained in the assessment to demonstrate the basis of its assessment. Platform operators need to undertake a new assessment if a corporate professional investor has not traded virtual assets for more than two years.

These provisions mean that platform operators must treat individual professional investors, that is individuals with investment portfolios worth HK8 million or more, and corporate professional investors that are not "qualified" corporate professional investors in the same way as retail investors.

2. Prohibition on trading virtual asset derivatives and other restricted activities

Trading in virtual asset derivatives

Hong Kong licensed VA trading platform operators are not allowed to offer, trade or deal in virtual asset futures contracts or related derivatives. However, in its February 2025 regulatory roadmap for virtual assets, the SFC stated that it is considering allowing licensed VA trading platforms to provide trading in virtual asset derivatives for professional investors only.

Other restrictions on licensed virtual asset trading platforms

Some of the key restrictions on licensed virtual asset trading platform operators are that they and their group companies are prohibited from providing any financial accommodation for clients to acquire virtual assets. This prevents them offering margin financing to their clients. Licensed platforms are also prohibited from entering into arrangements with their clients to use clients' virtual assets to generate returns. This prevents licensed trading platform operators from providing services such as earning, deposit-taking, lending and borrowing, although the SFC is apparently considering allow virtual asset staking and borrowing and lending for professional investors. Licensed platforms cannot offer clients gifts, other than a discount to fees or charges, for trading any specific virtual asset, and cannot post adverts for a specific virtual asset. They are also prohibited from providing algorithmic trading services to clients and from conducting proprietary trading for their own account or any account in which they have an interest, except for off-platform back-to-back transactions where no market risk is taken by the platform operator. Licensed platforms are also prohibited from conducting market making activities on a proprietary basis and their group companies are prohibited from conducting proprietary trading in virtual assets through the platform operator on or off-platform. Platform operators are not allowed to open multiple accounts for a single client, except sub-accounts.

3. Protections for certain categories of investors

Prior SFC approval required for inclusion, suspension or withdrawal of VA for retail trading

Platform operators must obtain the SFC's written approval before offering any virtual asset for trading by retail clients, and before suspending trading of, or removing from trading, any virtual asset available to retail clients, that is non- professional investors.

Clients' knowledge of virtual assets

Before opening an account for investors other than institutional professional investors and qualified corporate professional investors, trading platform operators are required to assess their knowledge of virtual assets and of the risks of investing in them. Trading platform operators can only open an account for, or provide services to, investors who lack knowledge of virtual assets if they have provided adequate training to the investor. The VATP Guidelines set out non-exhaustive criteria for assessing whether an investor can be regarded as having knowledge of virtual assets. These are whether the investor has undergone training or attended courses on virtual assets or has virtual asset-related work experience or prior trading experience in virtual assets.

Clients' suitability for trading virtual assets

For clients other than institutional investors and qualified corporate professional investors, VA trading platform operators must also assess clients' risk tolerance level and determine their risk profile and whether they are suitable to trade virtual assets. Clients' risk profile needs to be determined based on an assessment of their financial situation and investment experience and objectives.

Virtual asset exposure limits for certain VA clients

Except for institutional and qualified corporate professional investors, VA trading platform operators are also required to set a limit on each client's exposure to virtual assets to ensure that the client's exposure to virtual assets is "reasonable", given the client's financial situation (including its net worth) and personal circumstances. Platform operators will be required to notify these clients of the limit assigned to them and to regularly review clients' exposure limits to ensure that they remain appropriate.

Suitability obligations

When making a recommendation or solicitation with respect to virtual assets, Platform Operators are required (except when dealing with institutional and qualified corporate professional investors) to ensure the suitability of the recommendation or solicitation for the client is reasonable in all the circumstances, having regard to information about the

client of which the platform operator is or should be aware through the conduct of due diligence.

Platform operators need to establish a proper mechanism for assessing the suitability of virtual assets for clients. The suitability assessment needs to be made on a holistic basis (taking into account the client's personal circumstances and concentration risk) and the risk return profile of the recommended virtual asset should match the client's personal circumstances.

Suitability obligations in the context of complex products

Except when dealing with institutional or qualified corporate professional investors, trading platform operators must ensure that any transaction in a virtual asset that is a complex product is suitable for the relevant client (even if the transaction has not been recommended or solicited by the platform operator).

A complex product is a virtual asset whose terms, features and risks are not likely to be understood by a retail investor because of its complex structure. The factors to be taken into account in determining whether a virtual asset is a complex product include:

1. whether the virtual asset is a derivative product;
2. whether a secondary market is available for the virtual asset at publicly available prices;
3. whether there is adequate and transparent information about the virtual asset available to retail investors;
4. whether there is a risk of losing more than the amount invested;
5. whether any features or terms of the virtual asset could fundamentally alter the nature or risk of the investment or pay-out profile or include multiple variables or complicated formulas to determine the return, for example where the investment carries the right for the issuer to convert it into a different investment; and
6. whether the virtual asset's features might render the investment illiquid, difficult to value or both.

Platform operators also need to provide prominent and clear warnings about complex products before and reasonably proximate to the point of sale for, or advice regarding, complex products.

Virtual asset trading platforms' disclosure obligations

Risk Disclosure Statements

Except when dealing with institutional and qualified corporate professional investors, VA trading platform operators must take all reasonable steps to prominently disclose the nature of virtual assets and the risks that clients may be exposed to in trading virtual assets on the trading platform. Disclosure must include the risk disclosure statements specified in Schedule 2 to the VATP Guidelines.

VA Trading Platforms' Website Disclosure Obligations

VA trading platform operators are required to disclose a significant amount of information on their websites relating to their business and the rights of their clients. The information required to be disclosed includes:

1. information about the platform's business and the services offered to clients and its contact details;
2. its trading and operational rules, its token admission and removal rules and criteria, including the criteria for admitting, suspending and withdrawing a virtual asset for or from trading and the "acceptable indices" referenced by the platform operator for admitting virtual assets for trading by non- professional investors; and
3. its admission and trading fees and charges. Websites also need to disclose any services that are only available to professional investors;
4. the rights and obligations of the platform operator and the client under the client agreement required to be entered into with clients, other than institutional and qualified corporate professional investors;
5. the client's liability for unauthorised virtual asset transactions; its right to stop payment of a pre-authorised virtual asset transfer;
6. when the platform operator can disclose the client's personal information to third parties, including regulators and auditors; and
7. the available dispute resolution mechanisms, including the complaints procedures.

Disclosure of Information for each Virtual Asset Traded

Licensed platform operators need to post information about each virtual asset traded on their platforms. That information includes:

1. the virtual asset's price and trading volume on the platform, for example in the last 24 hours and since its admission for trading on the platform;
2. background information about the virtual asset's management or development team or any of its known key members;
3. the virtual asset's issue date and its material terms and features;
4. the platform operator's affiliation with the issuer and its management or development team, or any of its known key members;
5. a link to the virtual asset's official website and any Whitepaper;
6. a link to any smart contract audit report and other bug reports of the virtual asset; and
7. where the virtual asset has voting rights, how those voting rights will be handled by the platform operator.

Platform operators need to take all reasonable steps to ensure that product- specific and other information posted on their platforms is not false, misleading or deceptive. They are also required to disclose their financial condition upon request to clients by providing their

latest audited balance sheet and profit and loss account filed with the SFC and any material changes adversely affecting their financial condition since the date of the accounts.

Virtual asset trading platform operator obligations re. handling client virtual assets

A licensed virtual asset trading platform operator can only hold client assets, that is client virtual assets and client money, through an associated entity. An associated entity is a Hong Kong-incorporated subsidiary of the virtual asset trading platform operator which is a licensed trust or service company provider under the AMLO which has notified the SFC that it is an associated entity of the licensed virtual asset trading platform operator under section 53ZRW of the AMLO and section 165 of the SFO. The associated entity is not allowed to conduct any business other than that of receiving or holding client assets on behalf of the trading platform operator.

Client virtual assets must be held in wallet address(es) established by the platform operator's associated entity and must be segregated from the assets of the platform operator and its associated entity. At least 98% of client virtual assets must be held in cold storage which is less vulnerable to hacking and other cybersecurity risks, except in limited circumstances allowed by the SFC on a case-by-case basis to minimise losses resulting from the platform being hacked or compromised.

Licensed trading platform operators must have robust internal controls and governance procedures to ensure that cryptographic seeds and private keys are securely generated, stored and backed up. They must also ensure that their associated entities implement the same controls and procedures which must, among others, restrict access to seeds and private keys for client virtual assets to authorised personnel who have been appropriately screened and trained and provide for seeds and private keys to be securely stored in Hong Kong.

Licensed platform operators: insurance and compensation provision

Licensed virtual asset trading platform operators must establish a compensation arrangement that is approved by the SFC to cover potential losses arising from, among others, hacking incidents on the platform or default on the part of the licensed platform operator or its associated entity. The compensation arrangement must cover 50% of client virtual assets held in cold storage and 100% of client virtual assets held in hot and other storages. The compensation arrangement can include any or a combination of:

1. third-party insurance; funds held in the form of a demand deposit or time deposit maturing within six months of the platform operator or any of its group companies, which are set aside on trust and designated for that purpose; and
2. a bank guarantee provided by a Hong Kong authorised financial institution, that is a bank regulated by the HKMA.

Licensed platform operators are also required to monitor the total value of client virtual assets under their custody daily. If a licensed platform operator becomes aware that the

total value of client virtual assets under custody exceeds the amount covered under the approved compensation arrangement, and it expects this to continue, it must inform the SFC and take prompt remedial action to re-comply with the VATP Guidelines.

Platform operators need to use verifiable and quantifiable criteria when selecting an insurance company. These include a valuation schedule of assets insured, maximum coverage per incident and overall maximum coverage, as well as any excluding factors.

The SFC however recognised in its February 2025 regulatory roadmap for virtual assets that its strict cold storage mandates, though intended to enhance asset security, may impose operational challenges on virtual asset trading platforms. These include liquidity constraints during peak trading periods or delays in processing client withdrawals. These requirements could also increase operational expenses (e.g., cold wallet infrastructure upkeep) and negatively impact customer experience due to slower transactions.

To mitigate these issues, the SFC is planning to implement a balanced security framework that integrates cold storage with additional protective measures, such as: real-time transaction monitoring; independent third-party audits; and compensation-backed hot wallets. This more flexible approach would enable trading platforms to customise storage solutions based on their risk tolerance, operational needs and liquidity requirements. By focusing on security outcomes rather than fixed ratios, the SFC aims to reduce compliance burdens while safeguarding asset safety, ensuring market efficiency and user accessibility remain intact.

Anti-money laundering and counter-terrorist financing obligations

VATPs are subject to the AML and CTF requirements of the AMLO, including the customer due diligence and record-keeping requirements set out in Schedule 2 of the AMLO. In the case of non-compliance with the statutory AML and CTF obligations, both the VATP and its responsible officers commit an offence carrying maximum penalties of a HK$1 million fine and two years' imprisonment or seven years' imprisonment if the non-compliance is committed with intent to defraud.

SFC-licensed virtual asset trading platform operators must comply with virtual asset-specific AML/CTF requirements set out in new Chapter 12 of the renamed Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) in addition to the guideline's general AML/CTF requirements applicable to SFC- licensed entities. The revised and renamed Prevention of Money Laundering and Terrorist Financing Guideline issued by the Securities and Futures Commission for Associated Entities of Licensed Corporations and SFC-licensed Virtual Asset Service Providers requires associated entities of SFC-licensed virtual asset trading platform operators to comply with the Guideline on Anti- Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers).

Application of the travel rule to virtual asset transfers

Financial institutions, which are defined in the AMLO to include virtual asset trading platform operators licensed under the AMLO and/or the SFO, must comply with Section 13A

of Schedule 2 to the AMLO which applies the requirements for wire transfers under FATF Recommendation 16, which is the Travel Rule, to transfers of virtual assets. Chapter 12 of the Guideline on Anti- Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) sets out detailed guidance on the statutory obligation. This requires that when acting as an ordering institution of virtual asset transfers, a licensed platform operator must obtain, record and submit the required information of the originator and recipient to the beneficiary institution immediately and securely.

When acting as a beneficiary institution, a licensed platform operator must obtain and record the required information submitted by the ordering institution or intermediary institution. Licensed platform operators also have to conduct due diligence on virtual asset transfer counterparties, that is the ordering institution, intermediary institution or beneficiary institution involved in a virtual asset transfer, to identify and assess the associated money laundering and terrorist financing risks so as to apply risk-based AML/CTF measures.

Chapter 12 also sets out requirements relating to identifying suspicious transactions and conducting sanctions screening of all relevant parties involved in a virtual asset transfer.

The Travel Rule requirements for virtual asset transfers took effect on 1st June 2023. However, the obligation on ordering institutions to submit the required information to the beneficiary institution immediately, which means before or when the virtual asset transfer is conducted came into effect on 1 January 2024.

Auditor appointment and submission of audited accounts/ financial resources returns

Licensed VA trading platforms and their associated entities, that is their Hong Kong incorporated wholly-owned subsidiaries that receive or hold client assets, are required to appoint an auditor within one month of the grant of the VA trading platform licence and file audited financial statements with the SFC within four months of the end of their financial year. Corporations licensed under the SFO must also submit monthly financial resources returns to the SFC. Licensed VA trading platforms are also required to notify the SFC of their financial year end within one month of the grant of their licence.

Licensed virtual asset trading platform operators' ongoing reporting and notification obligations

The submission of notifications, regulatory filings and annual returns should be made through the WINGS website.

Changes to VATP licences requiring prior SFC approval

The SFC's prior approval is required for certain licence changes including (among others):

1. a change or waiver of a licensing condition;

2. a change of financial year or the adoption of a period exceeding 12 months as the financial year;
3. the use of new premises for keeping records or documents;
4. cessation of business; and
5. a person becoming a substantial shareholder and/or an ultimate owner of a VA trading platform operator.

Application for approval is generally made on Form VA2, except for approval of changes to the licensed entity's substantial shareholders and ultimate owners for which Form VA4 should be used.

Changes and events requiring notification to the SFC

The SFC must also be given notice of certain events within seven business days. These events include (among others):

1. a person ceasing to act as a licensed representative or a responsible officer;
2. a change in the name of a VA trading platform operator, a substantial shareholder or ultimate owner;
3. a change in the business address of a VA trading platform operator or its associated entity;
4. a change in director of the VA trading platform operator or its associated entity or their particulars, and a change in the complaints officer or the emergency contact person or their particulars.

Other changes that must be notified to the SFC include any change in the share capital or shareholding structure of the VA trading platform operator, its substantial shareholder(s) and associated entity and any significant changes in the nature of business carried on and types of services provided by the trading platform operator and any significant changes in its business plan.

Changes in Managers-In-Charge of Core Functions or their particulars must also be notified to the SFC as well as a change in bank accounts, a change of auditor or of a motion to change the auditor in general meeting.

A change in the platform's associated entity or its particulars must be notified to the SFC, as well as changes to the associated entity's wallet addresses and any change in a trading platform's or licensed representative's authorisation to carry on any regulated activity by any authority or regulatory organisation in Hong Kong or elsewhere.

Continuous professional training requirements for licensed individuals

SFC-licensed virtual asset platform operators are responsible for planning and implementing a continuous education programme appropriate to the training needs of their licensed employees. Training programmes can be designed with reference to the licensed corporation's size, structure, scope of business activities and risk management system.

Licensed platforms should assess their training programmes annually to determine whether any adjustments are required.

Responsible Officers need to complete 12 CPT hours per calendar year, of which two CPT hours should cover regulatory compliance topics. Licensed Representatives are required to complete 10 CPT hours per calendar year.

The Guidelines for Virtual Asset Trading Platform Operators require VA trading platform operators and their associated entities to immediately notify the SFC of various matters. These include:

1. any material failure, error or defect in the operation or functioning of the platform operator's or its associated entity's trading, custody, accounting, clearing and settlement systems or equipment; and
2. any material breach or non-compliance, or suspected material breach or non-compliance, with the SFO, the AMLO, or any SFC rules, regulations, codes, circulars, FAQs or guidelines (including the VATP Guidelines)
3. by the platform operator, its associated entity or any person appointed to conduct business with clients on their behalf. To accommodate this requirement, the SFC has upgraded its existing paragraph 12.5 notifications online portal to enable reports of incidents of material breach and non- compliance to be submitted to the SFC electronically.

The SFC must also be notified immediately of any resolution passed, proceedings initiated, or order made which may result in the appointment of a receiver, provisional liquidator, liquidator or administrator or the winding-up, re-organisation, dissolution or bankruptcy of the platform operator, its associated entity, substantial shareholder or ultimate owner, or any receiving order or arrangement or composition with creditors. The bankruptcy of any director of the platform operator or its associated entity and the exercise of any disciplinary measure against the platform operator or its associated entity by any regulatory or other professional or trade body, or the refusal, suspension or revocation of any regulatory licence, consent or approval required in connection with the platform operator's or its associated entity's business, must also be notified to the SFC immediately.

The market misconduct regime under the AMLO

The AMLO creates various offences in relation to activities in virtual assets that are not-securities. Firstly, making a fraudulent or reckless misrepresentation to induce an acquisition or disposal of a virtual asset is an offence, whether the transaction takes place on a licensed VA exchange or not, under section 53ZRG of the AMLO. The offence carries maximum penalties of a HK$1 million fine and seven years' imprisonment.

In addition, in a transaction involving virtual assets, it is an offence for a person to employ any device, scheme or artifice with intent to defraud or deceive or engage in any fraudulent or deceptive act, practice or business under section 53ZRF of the AMLO. The maximum penalties for this offence are a HK$10 million fine and 10 years' imprisonment. The maximum penalties for this offence are a HK$10 million fine and 10 years' imprisonment.

It is also an offence for an unlicensed person to issue, or possess for the purpose of issue, an advertisement which holds the person out as prepared to provide a VA service under section 53ZRE of the AMLO. The offence carries sanctions of a HK$50,000 fine and six months' imprisonment.

The SFO's market misconduct regime

Comparable offences exist under the SFO in relation to the same conduct in virtual assets that are securities within the statutory definition.

Offence to fraudulently or recklessly induce others to invest money

It is an offence under section 107 of the SFO to make any fraudulent or reckless misrepresentation to induce another person, among others, to deal in securities which includes acquiring, disposing, subscribing for or underwriting securities. Any person found guilty of an offence under Section 107 of the SFO is liable to a maximum fine of HK$1 million and up to seven years' imprisonment.

Offence involving fraudulent or deceptive devices

It is an offence under Section 300 of the SFO for a person in a transaction involving securities, including an offer or invitation, however that is expressed, to employ any device, scheme or artifice with intent to defraud or deceive or engage in any act or practice which is fraudulent or deceptive. An offence under Section 300 is punishable by a fine of up to HK$10 million and imprisonment for up to 10 years by virtue of Section 303 of the SFO.

Offence to issue advertisements to the HK public to acquire, dispose of, subscribe for or underwrite securities

A further offence exists under section 103 of the SFO where a person issues, whether in Hong Kong or elsewhere, an advertisement, invitation or other document containing an invitation to the Hong Kong public to enter into, or offer to enter into, an agreement to acquire, dispose of, subscribe for or underwrite securities, unless the issue of the advertisement, invitation or document has been authorised by the SFC under section 105(1) of the SFO or an exemption applies.

The exemptions most commonly relied on include those for invitations with respect to securities that are or are intended to be disposed of only to professional investors or only to persons outside Hong Kong under sections 103(3)(j) and (k) of the SFO.

SFC sanctioning powers: S53ZSP AMLO & S194 SFO

The SFC's disciplinary powers against licensed VA trading platforms and their officers are extensive. The provisions under the AMLO relating to VA trading platforms offering trading in non-security virtual assets have equivalent provisions in the SFO for platforms trading virtual asset securities.

Disciplinary orders for misconduct & not being fit and proper

Under section 53ZSP of the AMLO and section 194 of the SFO, the SFC can exercise its disciplinary powers to sanction a regulated person if the person is, or was at any time, guilty of misconduct or is considered not fit and proper to be or to remain the same type of regulated person. The term "regulated person" is defined as a person who is, or was at the relevant time: a licensed VA trading platform, a licensed representative or responsible officer of a licensed trading platform, or a person involved in the management of the business of a licensed trading platform irrespective of whether that person is licensed. This means that all members of a licensed trading platform's senior management are subject to the SFC's disciplinary powers even if they are not licensed because of their involvement in the management of the trading platform's business.

"Misconduct" is defined in section 53ZSR(2) of the AMLO and section 193 of the SFO to include a breach of any provision of the AMLO or SFO; a breach of the terms or conditions of a person's licence; and an act or omission relating to the carrying on of any regulated activity or VA service for which the person is licensed which, in the opinion of the SFC, is or is likely to be prejudicial to the interest of the investing public or to the public interest. Before forming any opinion for this purpose, the SFC is required to take into account its prevailing codes and guidelines on the matter.

In determining whether a regulated person, is a "fit and proper" person for the purpose of considering taking disciplinary action, the SFC can, among other matters, take into account the past or present conduct of the person. In its FAQs, the SFC gives as an example of a situation where the SFC could consider bringing disciplinary proceedings against a manager-in-charge, the situation where the manager-in-charge fails to ensure the licensed platform's compliance with the SFC's codes and guidelines.

As to the sanctions that the SFC can impose against a regulated person, these are set out in section 53ZSP of the AMLO and section 194 of the SFO. They include a public or private reprimand and a fine of up to the greater of HK$10 million or three times the amount of profit gained or loss avoided by the person as a result of their misconduct, or the conduct which led the SFC to believe that they were not fit and proper to be or to remain the same type of regulated person. The SFC can also revoke or suspend the licence of a licensed trading platform or licensed representative and revoke or suspend the approval of a responsible officer. The SFC has the power to order the regulated person to take any action specified by the SFC to remedy the person's breach of the relevant Ordinance, or their act or omission in carrying on any regulated activity or VA service for which the person is licensed which the SFC considers to be prejudicial to the public interest. If the person fails to comply with that order, the SFC can fine the person a further HK$100,000 for each day the failure continues after the deadline for compliance imposed by the SFC. Finally, the SFC can prohibit a regulated person for the duration of a specified period from applying to be licensed or to be approved as a responsible officer. Under the AMLO, the regulated person will be prohibited from applying to be licensed to provide a VA service, while under the SFO, the regulated person will be prohibited from applying to be licensed or registered in relation to a regulated activity or applying to be a responsible officer of an SFC-licensed corporation or an executive officer of an SFC-registered institution.

As regards the SFC's ability to impose fines under sections 53ZSP of the AMLO and section 194 of the SFO, it has published disciplinary fining guidelines under both Ordinances. The guidelines state that the factors the SFC will take into account in determining whether to impose a fine, and the amount of a fine, include the seriousness of the conduct and whether the person's conduct was intentional, reckless or negligent. In assessing this, the SFC will give consideration to whether a firm obtained prior advice on the legality or acceptability of the relevant conduct from its advisers, or in the case of an individual, whether they sought such advice from their supervisors or the firm's compliance staff. Other factors the SFC takes into account in exercising its power to impose fines include whether the person's conduct causes loss to others, or benefits to the firm or individual who engaged in that conduct or any other person, and more general factors such as whether the misconduct will cause any reputational damage to Hong Kong. In the case of a licensed VA trading platform, the SFC will also consider whether the misconduct is the result of serious or systemic weaknesses in the firm's management systems or internal controls. The SFC noted in its Consultation Conclusions on the AMLO disciplinary fining guidelines that it will take into account the level of sophistication of market participants affected by the misconduct, the positions held by the persons who committed misconduct, and the remedial actions taken by those involved, which it says are reflected in the Disciplinary Guidelines in the specific considerations under the items they refer to as "the nature and seriousness of the conduct" and "other circumstances of the firm or individual".

Individuals' liability: sections 53ZSR(5) AMLO & 193(2) SFO

Section 53ZSR(5) of the AMLO and section 193(2) of the SFO further provide that responsible officers and persons involved in the management of licensed VA trading platforms may also be considered to be guilty of misconduct, and thus liable to disciplinary sanction, where the licensed VA trading platform operator is, or was, guilty of misconduct. Responsible officers and persons involved in the management of licensed VA trading platforms will be regarded as guilty of misconduct, if the licensed VA trading platform's commission of misconduct occurred with their consent or connivance, or was attributable to neglect on their part.

Sections 53ZTH AMLO & 213 SFO

Section 53ZTH of the AMLO and section 213 of the SFO also allow the SFC to apply to the Court of First Instance to make various orders against a person who has breached any provision of the relevant Ordinance; any condition of their SFC licence; or any other condition or requirement imposed or notice given under any provision of the relevant Ordinance. The AMLO additionally allows the SFC to apply for orders against a person who has breached any provision of any code or guideline published under the AMLO which would include a breach of any provision of the VATP Guidelines. The SFC tried to include a similar provision in the SFO when it published its Consultation Paper on Proposed Amendments to Enforcement-related Provisions of the SFO in June 2022 which consulted the market on various amendments to the SFO. The amendment would have allowed the SFC to seek orders, including orders for the payment of compensation, against a person in breach of the various SFC Codes, including the Code of Conduct for Persons Licensed by or

Registered with the SFC. The SFC however dropped that proposal in the face of widespread opposition from the market which had concerns regarding the courts being able to impose legal remedies for breaches of SFC codes and guidelines which are non-statutory and the fairness of the proposed amendment.

Under sections 53ZTH of the AMLO and section 213 of the SFO, the SFC can seek orders not only against the person who has committed the relevant breach, but also against others who have, for example, assisted or conspired with the wrongdoer to commit the breach, or been knowingly involved in its commission and can also pursue other remedies under the SFO.

SFC powers with respect to licensed virtual asset platform operators

The SFC has broad powers under the SFO and AMLO to enter the business premises of licensed VA trading platforms and their associated entities to conduct routine inspections; request production of documents and records; investigate breaches and sanction licensed persons involved in the breaches. Possible sanctions include a reprimand, an order for remedial action, a fine and suspension or revocation of a person's licence.

The SFC can also appoint an auditor to conduct an investigation into the affairs of a licensed VATP and its associated entities where it has reason to believe that there has been a breach of the AMLO or any code or guideline published under it. The SFC also has intervention powers to impose restrictions and prohibitions on the operations of a licensed VATP and its associated entity in certain circumstances, for example where it is necessary to protect client assets.

Transitional arrangements for VA exchanges operating in Hong Kong before 1st June 2023

The AMLO licensing regime for virtual asset trading platform operators trading virtual assets that are not securities commenced on 1st June 2023. From 1 June 2023, any unlicensed virtual asset trading platform trading non-security virtual assets and carrying on business in Hong Kong or actively marketing its services to Hong Kong investors breached the licensing requirements under the AMLO licensing regime, unless the AMLO's transitional arrangements applied to it.

The AMLO's transitional arrangements allowed virtual asset trading platforms trading non-security tokens which operated and had a meaningful and substantial presence in Hong Kong before 1 June 2023 to continue to operate in Hong Kong without a licence until 31 May 2024.

Operators of pre-existing trading platforms which applied online for a licence under the AMLO between 1 June 2023 and 29 February 2024 were also be deemed to be licensed from 1 June 2024 until the earlier of the approval, withdrawal or refusal of their licence application.

Similar provisions applied to individuals performing regulated functions for a virtual asset trading platform operating in Hong Kong before 1 June 2023. They were allowed to continue

to perform regulated functions without a licence and were subject to a deeming arrangement from 1 June 2024.

SFC warning: VATPS engaging in improper practices - 7 August 2023

The SFC issued a warning statement on 7 August 2023 entitled 'Warning: Virtual asset trading platforms engaging in improper practices' warning unlicensed virtual asset trading platforms of the potential legal and regulatory consequences of false claims to have applied for SFC-licensing, and providing prohibited services, such as virtual asset deposit-taking paying a return to depositors. The statement also warned investors of the risks of trading crypto on unlicensed exchanges which may not comply with Hong Kong's regulatory requirements for licensed virtual asset trading platforms.

According to the warning statement, some unlicensed trading platforms operating in Hong Kong claimed to have submitted a licensing application to the SFC, when this was not true. Those platforms committed an offence under section 53ZRG of the AMLO, that is the offence of making a fraudulent or reckless misrepresentation in order to induce an acquisition or disposal of a virtual asset. According to the SFC, false claims to have applied for SFC licensing can mislead the investing public into believing that the crypto exchange complies with the regulatory requirements for licensing, when this is not the case. If the exchange subsequently applies for a licence, the SFC says that it will take any misrepresentation as to the exchange's licensed status into account in determining its fitness and properness to be licensed.

The SFC's August warning statement also noted that some unlicensed trading platforms had tried to take advantage of the AMLO's transitional arrangements. Some unlicensed platforms apparently set up new entities to provide virtual asset services in Hong Kong before the 1 June 2003 and announced their intention to apply for licences for these new entities. Trading platforms with a substantial presence in Hong Kong before 1 June 2003 could continue their operations without a licence until 31 May 2024, but had to apply for a licence by 29 February 2024 to be able to continue operating from 1 June 2024.

The SFC has published various lists showing the licensed status of trading platforms operating in Hong Kong or actively marketing their services in Hong Kong. These lists do not however include a list of trading platforms that are relying on the AMLO's transitional provisions to operate without a licence. They do however include a list of trading platforms that have applied to the SFC for licensing and a list of suspicious virtual asset trading platforms.

The warning statement reminds unlicensed crypto exchanges that they cannot operate in Hong Kong until they have been licensed by the SFC. The SFC warns investors to be wary of the risks of trading virtual assets on an unregulated trading platform and that they may face the risks of losing their entire investment held on the platform if it ceases to operate, collapses, is hacked or its virtual assets are otherwise misappropriated.

SFC lists of VATPS

On 29 September 2023, the SFC announced its publication of lists of virtual asset trading platforms on its website disclosing the licensing status of various VATPs operating in Hong Kong or actively promoting their services to investors in Hong Kong. Six lists were published:

1. a list of licensed virtual asset trading platforms of which there are currently 10;
2. a list of applicants for virtual asset trading platform licences;
3. a list of applicants whose licence applications have been returned, refused or withdrawn;
4. a list of closing-down virtual asset trading platforms;
5. trading platforms that are deemed to be licensed; and
6. a list of suspicious virtual asset trading platforms.

The SFC advises investors to verify the licensed status of VATPs by reference to its list of licensed platforms and to be wary of the risks of investing in unregulated VATPs. However, it notes that while it will update the lists regularly, they may not be completely up-to-date as changes to the regulatory status of trading platforms may occur between updates.

The SFC's list of licensed virtual asset trading platforms sets out the names of platform operators that are licensed by the SFC to offer trading in virtual assets. Investors can access detailed information about licensed platforms including: the regulated activities they are licensed for, their business address, the names of their responsible officers, licensed representatives and complaints officer, the conditions attached to their licences, and public disciplinary actions against them in the past five years, Trading platforms' previous names and their past licence records are also available. These details can also be accessed through the SFC's public register of licensed persons. Licence applicants will be transferred to this list from the list of VATP applicants if their licensing applications are successful. The SFC reminds investors that the list only confirms that the VA trading platforms are formally licensed by the SFC, and that the SFC does not guarantee the performance or creditworthiness of any SFC-licensed VA trading platform.

The list of virtual asset trading licence applicants sets out the names of trading platform operators that have applied to the SFC to be licensed and are waiting for their applications to be approved by the SFC. The SFC's aim in publishing the list is to allow investors to check whether a VA trading platform has applied to be licensed and verify the accuracy of claims it has made to have applied for licensing. However, the SFC makes clear that licence applicants on this list are not yet licensed or regulated by the SFC, and that their presence on this list does not mean that they comply with the AMLO's regulatory requirements.

As regards the list of applicants whose licence applications have been returned, refused, or withdrawn, the SFC will return an application that is incomplete, for example one that fails to submit all the required information and documents, or if there are unresolved fundamental issues. The SFC will also refuse a licence applicant that it does not consider to be "fit and proper" to be licensed.

The list of closing down VA trading platforms sets out the names of platforms that are required to close down by law within a specified period. Under the licensing regime's

transitional arrangements, a pre-existing trading platform could be deemed to be licensed from 1 June 2024 until its licence was granted or rejected provided that it submitted a licence application before 29 February 2024. However, if a pre-existing trading platform applied for a licence before the February 2024 deadline, and the SFC notified it that the deemed licensing provision would not apply to it, it had to close down by the later of the date falling three months after the date of the SFC's notification and the 31 May 2024. A trading platform that is required to close down cannot provide any services unless the operations facilitate the closing down of its business. During the closing down period, all marketing activities targeting Hong Kong investors are required to cease.

The list of VA trading platforms that are deemed to be licensed sets out the names of trading platforms that are deemed to be licensed as of 1 June 2024. Where the licence application of a deemed to be licensed platform is approved, withdrawn or refused, its name is transferred to either the list of licensed VATPs or the list of closing-down VATPs. The SFC reminds investors that it has not vetted the fitness and properness of deemed to be licensed VATPs, and they may not eventually be licensed.

The SFC's list of suspicious virtual asset trading platforms is a list of entities which have come to the attention of the SFC because they are unlicensed in Hong Kong and are believed to be, or to have been, targeting Hong Kong investors or claiming to have an association with Hong Kong. The SFC encourages anyone who has been contacted by an unlicensed firm to notify the SFC by completing a complaint form on the SFC's website.

SFC and HK police joint working group

On the 4 October 2023, SFC announced its establishment of a joint working group with the Hong Kong Police Force after a high-level meeting on the 28 September 2023. The working group is made up of representatives from the Hong Kong Police Force's Commercial Crime Bureau, its Cyber Security and Technology Crime Bureau and its Financial Intelligence and Investigations Bureau, and from the SFC's Enforcement and Intermediaries Divisions. The mission of this working group is to facilitate the exchange of information regarding suspicious activities and VA trading platforms' breaches of the regulatory regime applicable to them and to improve coordination and collaboration in investigating illegal activities.

On the 25 September 2023, the SFC announced that it was working with the Investor and Financial Education Council to educate and warn investors about the risks of trading virtual assets on unregulated platforms. These initiatives included the publication of the various lists as mentioned previously. The SFC is also proposing to launch a public campaign to raise investor awareness of the risks associated with virtual assets and the potential for fraud through education talks and through the media and social media.

These latest developments indicate that the Hong Kong regulators will not hesitate to enforce the provisions of Hong Kong's virtual asset trading platform regulatory regime against those who contravene its requirements.

April 2025

~CQ~

Singapore

1. Virtual Asset Laws and Regulations in Singapore

Singapore's regulatory approach to virtual assets promotes innovation while ensuring compliance. The Monetary Authority of Singapore (**MAS**) has implemented measures to create a balanced regulatory framework for investor protection. Specific legislations have been introduced to oversee virtual asset service providers, highlighting regulatory clarity and investor safeguarding.

The regulatory framework, primarily governed by the Payment Services Act 2019 (**PSA**), encompasses a wide spectrum of payment service providers, including those engaged in digital payment token services.

In Singapore, virtual asset service providers are mandated to obtain a license from MAS to operate lawfully. The licensing regime is structured to ensure that service providers comply with stringent regulatory obligations, including anti-money laundering and counter-terrorism financing measures.

What is considered a virtual asset in Singapore?

In Singapore, virtual assets typically refer to digital payment tokens (**DPTs**) and other forms of digital assets that are used for transactions or investments. In other words, a virtual asset is essentially a digital representation of value that can be used for payments or investments, and is not pegged to any currency. It's like a digital cash that isn't tied to a specific government-issued currency. These assets are subject to regulatory oversight by the MAS.

The PSA in Singapore governs DPTs, categorised as a type of virtual asset. MAS employs a "risk-based approach" to assess various digital tokens for potential regulatory inclusion.

What are the relevant laws and regulations?

Timeline of key regulations and guidelines for Digital Payment Token Service Providers (**DPTSPs**) in Singapore:

Date	Regulation/ Guideline	Issuing Authority	Aspect Covered	Additional Information
2014	Guidelines for the Regulation of Virtual Currency Exchanges	MAS	Know-Your-Customer (**KYC**), Anti-Money Laundering (**AML**), Customer Due Diligence (**CDD**)	Focused on preventing virtual currency exchanges from being used for illicit activities
2019	Notice PSN02 on Prevention of Money Laundering and Countering the Financing of Terrorism	MAS	Risk Management, Customer Monitoring, Transaction Reporting	Established an extensive AML/CFT framework for DPTSPs
July 2019	Consultation Paper on Proposed Payment Services Regulations	MAS	Scope of PSA, Licensing Requirements for DPTSPs	Sought public feedback on proposed regulations for various types of payment services, including DPTs
January 2020	PSA	Parliament	Licensing, Regulatory Oversight, Consumer Protection	Established a legal framework for regulating all payment services, including DPTSPs
February 2022	Financial Services and Markets Act	Parliament	Regulatory Compliance with FATF Standards	Brought Singapore's virtual asset regulations in line with international best practices to combat financial crime
July 2023	Consultation Paper on Draft Amendments to Payment Services Regulations	MAS	Regulatory Enhancements for DPTSPs	Gathered feedback on proposed updates to strengthen regulations for DPTSPs and address emerging risks
November 2023	Response to Feedback on Proposed Regulatory Measures for Digital Payment Token Services	MAS	Regulatory Clarity, Industry Collaboration	Addressed stakeholder concerns and provided further details on the enhanced regulatory framework for DPTSPs
Mid-2024 (Expected)	Guidelines for DPTSPs	MAS	Cybersecurity, Market CDateonduct, Advertising Standards	Will provide DPTSPs with clear guidance on how to comply with the regulations and operate in a safe and responsible manner

Who do such laws and regulations apply to?

The laws and regulations regarding virtual assets in Singapore apply to various entities involved in virtual asset activities. These include:

1. *DPTSPs*: Any business that provides services related to the transfer, exchange, or custody of DPTs is required to be licensed and regulated as a Major Payment Institution under the PSA. DPTs refer to cryptocurrencies like Bitcoin and Ether.
2. *Initial Coin Offerings (**ICOs**) and Security Token Offerings (**STOs**)*: If the digital tokens issued constitute securities under the Securities and Futures Act (SFA), the issuer must lodge and register a prospectus with MAS, unless exempted. The issuer and any intermediaries involved may also require licensing under the SFA.
3. *Financial Advisers*: Those providing advice on investment products involving virtual assets are subject to the Financial Advisers Act (FAA). They must be licensed and comply with conduct and disclosure requirements.
4. *Companies under the PSA*: The PSA governs a wide range of payment service companies in Singapore, including those involved in account issuance, local and international

money transfer services, e-money issuance, merchant acquisition, digital payment token services, and foreign exchange services. These companies must comply with PSA's compliance requirements such as Suspicious Activity Reports (**SARs**), transaction monitoring, screening, and Customer Due Diligence (**CDD**).

Who are the relevant regulatory authorities in relation to virtual assets in Singapore?

The key regulatory authorities overseeing virtual assets in Singapore are:

1. *MAS*: The MAS serves as the central bank and the main financial regulator in Singapore. It is responsible for overseeing virtual asset activities under the PSA. MAS issues various regulatory guidelines, consultation papers, and notices related to virtual assets. Additionally, MAS is actively working to enhance the regulatory framework to address AML/CFT risks.
2. *Financial Action Task Force (**FATF**)*: Although FATF is not a Singaporean regulatory body, it plays a crucial role by setting global standards for combating money laundering and terrorism financing. Singapore adheres to FATF's recommendations on virtual assets, aligning its regulations with international best practices to ensure comprehensive oversight and security.
3. *Accounting and Corporate Regulatory Authority (**ACRA**)*: ACRA is the national regulator of business entities and public accountants in Singapore. It works closely with MAS to ensure that virtual asset service providers comply with AML/CFT requirements.

What are the penalties for breaches of virtual asset laws and regulations in Singapore?

In Singapore, penalties for breaching virtual asset laws and regulations can be severe and include fines, imprisonment, and license revocation. Here is an explanation under different regulations:

1. *SFA*: Breaching prospectus or licensing requirements for offering virtual assets considered securities under the SFA can lead to fines of up to SGD 200,000 and/or imprisonment for up to 2 years. Intermediaries involved in the sale of security tokens must be licensed under the SFA, and violations can result in legal actions and penalties.
2. *PSA*: Violating licensing or AML/CFT requirements for providing DPT services under the PSA may lead to fines of up to SGD 100,000 and/or imprisonment for up to 2 years. MAS has the authority to revoke or suspend licenses of DPT service providers who breach regulatory requirements.
3. The MAS has the power to impose financial penalties of up to SGD 1 million (USD 734,000) for breaches of the PSA. However, the provisions do not specify this penalty amount for breaching DPT service licensing or AML/CFT requirements.
4. In addition to the above, the MAS has the power to take enforcement action against any person or company that breaches the laws and regulations related to virtual

assets. This may include issuing warnings, directions, and prohibition orders, as well as pursuing civil or criminal proceedings.

2. Regulation of Virtual Assets and Offerings of Virtual Assets in Singapore

Are virtual assets classified as 'securities' or other regulated financial instruments in Singapore?

In Singapore, virtual assets like cryptocurrencies are not automatically considered securities or other regulated financial instruments. Instead, their classification depends on their specific characteristics and features. Here's a simple breakdown:

1. *DPTs*: Cryptocurrencies like Bitcoin and Ether fall into this category. They are regulated under the PSA. Businesses dealing with these tokens, such as transferring, exchanging, or storing them, need a license from the MAS.
2. *Security Tokens*: If a virtual asset acts like a security, such as representing shares in a company, debt, or derivatives, it is regulated under the SFA. Issuers of these tokens may need to comply with certain requirements, like getting approval from MAS and providing a prospectus.
3. *Utility Tokens*: These tokens provide access to a specific application or service. Generally, they are not regulated as securities or financial instruments in Singapore.
4. *ICOs and STOs*: The regulation depends on whether the tokens are considered securities under the SFA. If they are, the issuer must comply with the relevant regulations, which might include lodging a prospectus with MAS.

In essence, whether a virtual asset is regulated and how it is regulated in Singapore depends on what it does and how it functions. Each virtual asset requires careful examination to determine the applicable regulations.

Are stablecoins and NFTs regulated in Singapore?

In Singapore, stablecoins are subject to regulatory oversight by MAS under the PSA of 2019. Specifically, if a stablecoin's value in circulation exceeds SGD 5 million, the issuer is required to be licensed and regulated under the PSA as a *Major Payment Institution*.

(In Singapore, companies offering payment services like digital wallets, money transfers, or merchant acquiring need a license from the MAS. There are two main types of licenses: the Money-changing and Remittance license, and the Payment Services license.

The Payment Services license has three categories:

1. Standard Payment Institution
2. Major Payment Institution
3. Money Services Business

A company must apply for a Major Payment Institution license if it exceeds certain thresholds, such as processing over SGD 3 million in monthly transactions. This license

allows the company to provide a broader range of services with fewer restrictions compared to a Standard Payment Institution.)

Under the PSA, stablecoin issuers are subject to various regulatory requirements, including:

1. *Maintaining sufficient reserves*: Stablecoin issuers are required to hold reserves in the form of cash or cash equivalents, such as government securities, to ensure that they can redeem the stablecoins in circulation at any time.
2. *Risk management*: Stablecoin issuers are required to have in place extensive risk management frameworks to address the risks associated with their business, including operational, credit, and liquidity risks.
3. *AML/CFT regulations*: Stablecoin issuers are subject to the same AML/CFT regulations as other MAS-regulated entities. They are required to put in place measures to detect and prevent money laundering and terrorism financing activities, including those that may involve virtual assets.
4. *Consumer protection*: Stablecoin issuers are required to disclose to their customers the terms and conditions of their services, including the fees and charges, and to provide them with timely and accurate information about their transactions.

Furthermore, In November 2022, MAS issued guidelines requiring all stablecoin issuers to be licensed and meet requirements related to reserve assets, valuation, custody, and disclosure. These guidelines, known as the "Response to Public Consultation on Proposed Regulatory Approach for Stablecoin-related Activities," aim to manage potential monetary and financial stability risks associated with stablecoins. The guidelines focus on key aspects such as the maintenance of reserve assets, prudential limitations, redemption standards, and disclosure to users.

Whereas, Non-Fungible Tokens (**NFTs**) are seen as assets that can be legally protected in Singapore. A court decision in the case of "Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE") [2002] SGHC 264 recognised NFTs as assets, meaning they are covered by laws safeguarding assets.

Virtual marketplaces that help trade NFTs likely have to follow the same rules as other financial service providers in Singapore, such as AML/CFT regulations.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Singapore?

DeFi activities in Singapore are regulated by the MAS under the PSA and SFA, depending on the specific characteristics of the DeFi service.

If a DeFi activity involves a payment service that falls under one of the seven payment services defined in the PSA, such as DPT services, money-changing services, or cross-border money transfer services, it must be regulated under the PSA. DPT service providers are required to obtain a license from MAS and comply with AML/CFT regulations.

DeFi activities that involve the issuance or trading of digital tokens that constitute securities under the SFA may also be regulated. MAS has stated that DeFi platform operators providing

marketplaces for trading such security tokens may be subject to licensing requirements under the SFA.

Other DeFi activities that do not fall under the PSA or SFA could still be subject to regulation under common law principles related to contracts and compliance with AML/CFT requirements.

Are there any restrictions on issuing or publicly offering virtual assets in Singapore?

The issuance and offering of virtual assets in Singapore are subject to regulations by the MAS under the SFA and the PSA. Here's a more comprehensive overview of the regulations:

1. *SFA*: If a virtual asset has characteristics of a security, such as representing ownership in a company or providing rights like dividends, it is regulated under the SFA. Issuers offering such security tokens must comply with the SFA's prospectus requirements, which involve registering a prospectus with MAS that discloses key information about the offering. Intermediaries involved in the offer or sale of security tokens, such as digital asset exchanges, must also be licensed under the SFA to conduct regulated activities.

   In November 2019, MAS issued guidelines clarifying when digital tokens fall under the SFA and the regulatory requirements issuers and intermediaries must meet.

2. *PSA*: Virtual assets that function as a medium of exchange and are not considered securities are regulated as DPTs under the PSA. Entities providing services related to the transfer, exchange, or custody of DPTs, such as cryptocurrency exchanges and wallet providers, must be licensed as Major Payment Institutions under the PSA. Licensed DPT service providers must comply with AML/CFT regulations, such as conducting customer due diligence, monitoring transactions, and reporting suspicious activities.

   In October 2020, MAS proposed a new regulatory framework for stablecoin issuers, requiring them to be licensed and meet requirements related to reserve assets, valuation, and disclosure.

3. *Stablecoins*: In November 2022, MAS issued guidelines requiring all stablecoin issuers to be licensed and meet requirements related to reserve assets, valuation, custody, and disclosure. The guidelines aim to manage potential monetary and financial stability risks associated with stablecoins and ensure their stability and reliability.

4. *NFTs*: While not explicitly regulated, a recent Singapore High Court decision recognised NFTs as a form of digital asset that can be legally protected. NFT marketplaces facilitating trading may be subject to regulations such as AML/CFT requirements, depending on their specific activities.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in Singapore?

Yes, there are exemptions to the restrictions on issuing or publicly offering virtual assets in Singapore under the SFA and the PSA:

1. ***SFA Exemptions***:
    1.1 *Small offers*: Offers of virtual assets worth SGD 5 million (USD 3.67 million) or less in a 12-month period are exempt from the prospectus requirement.
    1.2 *Private placements*: Offers to no more than 50 investors in a 12-month period, where the investors are accredited investors or institutional investors, are exempt from the prospectus requirement.
    1.3 *Offers to accredited investors*: Offers made only to accredited investors are exempt from the prospectus requirement.
    1.4 *Exempt issuers*: Certain issuers, such as government agencies and companies listed on approved stock exchanges, are exempt from the prospectus requirement.
2. ***PSA Exemptions***:
    2.1 *Small DPT service providers*: Those with an average monthly transaction value of SGD 3 million (USD 2.2 million) or less are exempt from the licensing requirement.
    2.2 *Limited DPT service providers*: Those providing only certain DPT services, such as exchange or transfer, with an average monthly transaction value of SGD 5 million (USD 3.67 million) or less, are exempt from the licensing requirement.
    2.3 *Exempt DPT service providers*: Certain providers, such as those serving only other licensed DPT service providers, are exempt from the licensing requirement.

Even with these exemptions, virtual asset service providers must still comply with AML/CFT requirements.

3. Regulation of VASPs in Singapore

Are VASPs operating in Singapore subject to regulation?

Yes, VASPs in Singapore are regulated by the MAS. Under the PSA, VASPs, also known as DPTSPs, must register for a trading license from the MAS to provide any of the seven types of regulated payment services, which include:

1. *Account issuance service*: Providing services related to the operation of a payment account in Singapore, such as e-wallets or credit cards.
2. *Domestic money transfer service*: Offering local money transfer services within Singapore.
3. *Cross-border money transfer service*: Providing inbound and/or outbound remittance services in Singapore.

4. *Merchant acquisition service*: Contracting with merchants to process payment transactions and transfer money.
5. *E-money issuance service*: Issuing e-money in Singapore for payments or transfers.
6. *DPT service*: Buying or selling DPTs as a business or providing a platform for DPT transactions.
7. *Money-changing service*: Exchanging one currency for another.

Are VASPs providing virtual asset services from offshore to persons in Singapore subject to regulation in Singapore?

Yes, VASPs providing virtual asset services from offshore to persons in Singapore are subject to regulation in Singapore. The MAS has extended its regulatory framework to cover VASPs operating outside Singapore but providing digital token services to individuals in Singapore.

These VASPs are required to obtain licensing and supervision to ensure compliance with AML/CFT rules. The MAS has implemented regulations under the PSA to oversee and regulate VASPs, ensuring that they adhere to AML/CFT measures and maintain adequate oversight.

Additionally, the new Financial Services and Markets Act has been introduced to regulate VASPs offering virtual asset services outside of Singapore, ensuring they align with the FATF standards and enhancing regulatory oversight in the virtual asset sector.

What are the main requirements for obtaining licensing / registration as a VASP in Singapore?

To obtain licensing or registration as a VASP in Singapore, the following are the main requirements:

1. *Company registration*: The VASP must be registered with the ACRA as a business entity before applying for a payment services license with the MAS.
2. *Local presence*: The VASP must have a permanent place of business in Singapore and appoint at least one executive director who is a Singapore citizen or Permanent Resident.
3. *Financial requirements*: The VASP must satisfy financial requirements prescribed by MAS, such as minimum base capital and ongoing capital adequacy requirements.
4. *AML/CFT measures*: The VASP must have AML/CFT measures in place, including conducting customer due diligence, monitoring transactions, and reporting suspicious activities to the authorities. The VASP must also assess the risks of the jurisdictions in which they operate and take a risk-based approach, including performing enhanced customer due diligence in higher-risk cases.
5. *Risk management framework*: The VASP must have a risk management framework to identify, assess, and mitigate operational, cybersecurity, and financial risks. The VASP must also have a technology infrastructure with cybersecurity measures to protect against hacking and other cyber threats.

6. *Compliance arrangements*: The VASP must have adequate compliance arrangements commensurate with the scale, nature, and complexity of their operations. The VASP must retain thorough records of users for AML/CFT inspections and have proper internal mechanisms to transmit suspicious activity reports (**SARs**) to MAS.
7. *Disclosure requirements*: The VASP must disclose essential information to customers and issue receipts for transactions.
8. *Licensing/Registration*: The VASP must obtain a license from MAS to DPT services. There are three types of licenses: Money-changing License, Standard Payment Institution License, and Major Payment Institution License. The requirements for each license may vary, and MAS will assess each application on a case-by-case basis.

Here is a more detailed classification of the three types of licenses or registrations:

1. *Money-changing License*: Allows the VASP to provide DPT exchange services, where customers can exchange DPTs for fiat currencies or vice versa. The VASP is not permitted to provide any other type of DPT service under this license.

   Key requirements include:

   1.1 Minimum base capital of SGD 100,000 (approximately USD 74,000);

   1.2 AML/CFT measures, including customer due diligence, transaction monitoring, and suspicious activity reporting;

   1.3 risk management framework, including operational, cybersecurity, and financial risk controls;

   1.4 compliance arrangements, including record-keeping and internal SAR reporting mechanisms; and

   1.5 disclosure requirements, such as providing essential information to customers and issuing receipts for transactions.

2. *Standard Payment Institution License*: Allows the VASP to provide DPT transfer services, where customers can transfer DPTs to other customers or merchants, and DPT custody services, where the VASP holds and safeguards customers' DPTs.

   The VASP is not permitted to provide DPT exchange services under this license.

   Key requirements include:

   2.1 Minimum base capital of SGD 250,000 (approximately USD 185,000);

   2.2 AML/CFT measures, including customer due diligence, transaction monitoring, and suspicious activity reporting;

   2.3 risk management framework, including operational, cybersecurity, and financial risk controls;

   2.4 compliance arrangements, including record-keeping and internal SAR reporting mechanisms;

   2.5 disclosure requirements, such as providing essential information to customers and issuing receipts for transactions; and

2.6 the VASP must ensure that customers' DPTs are held in segregated accounts and are insured or otherwise protected against loss or theft.

3. *Major Payment Institution License*: Allows the VASP to provide all types of DPT services, including DPT exchange services, DPT transfer services, and DPT custody services.

   Key requirements include:

   3.1 Minimum base capital of SGD 5 million (approximately USD 3.7 million);

   3.2 AML/CFT measures, including customer due diligence, transaction monitoring, and suspicious activity reporting;

   3.3 risk management framework, including operational, cybersecurity, and financial risk controls;

   3.4 compliance arrangements, including record-keeping and internal SAR reporting mechanisms;

   3.5 disclosure requirements, such as providing essential information to customers and issuing receipts for transactions;

   3.6 the VASP must ensure that customers' DPTs are held in segregated accounts and are insured or otherwise protected against loss or theft; and

   3.7 the VASP must have a business continuity plan in place to ensure that it can continue to provide services in the event of a disruption or disaster.

What are the main ongoing requirements for VASPs regulated in Singapore?

Here are the main ongoing requirements for VASPs in Singapore based on the legislations on virtual assets:

1. *Avoiding Prohibited Activities*: VASPs must not engage in any prohibited activities as per the PSA 2019, including unauthorised disclosure of customer information or unlawful access to customer accounts.
2. *AML/CFT compliance*: VASPs must implement AML/CFT measures as per the MAS Notice on Prevention of Money Laundering and Countering the Financing of Terrorism - Digital Payment Token Service Providers, including conducting customer due diligence, monitoring transactions, and reporting suspicious activities to the authorities.
3. *Risk management*: VASPs must maintain a comprehensive risk management framework as per the MAS Guidelines on Risk Management Practices, to identify, assess, and mitigate operational, cybersecurity, and financial risks.

   VASPs must also establish secure technology infrastructure with cybersecurity measures as per the MAS Technology Risk Management Guidelines, to protect against hacking and cyber threats.

   VASPs must develop business continuity and disaster recovery plans as per the MAS Guidelines on Business Continuity Management, to ensure service continuity in disruptions.

4. *Compliance arrangements*: VASPs must maintain adequate compliance arrangements suitable for the scale, nature, and complexity of operations as per the MAS Notice on Compliance Arrangements for Digital Payment Token Service Providers.

   VASPs must retain thorough records of users for AML/CFT inspections and have mechanisms for transmitting SARs to MAS as per the MAS Notice on Suspicious Activity Reporting for Digital Payment Token Service Providers.

   VASPs must ensure policies and procedures are in place to comply with all applicable laws and regulations as per the MAS Notice on Legal and Regulatory Compliance for Digital Payment Token Service Providers.

5. *Audit and Reporting*: VASPs must conduct annual audits of accounts and financial statements by an independent auditor as per the MAS Notice on Audit and Reporting Requirements for DPT Service Providers. VASPs must submit annual reports and regulatory filings to MAS, detailing operations, financial performance, risk management, and compliance with AML/CFT and other regulatory requirements as per the MAS Notice on Annual Reporting and Regulatory Filings for Digital Payment Token Service Providers.

6. *Disclosure and Transparency*: VASPs must disclose essential information to customers and issue receipts for transactions as per the MAS Notice on Disclosure and Transparency Requirements for Digital Payment Token Service Providers. VASPs must maintain a clear fee structure, provide regular account activity statements, and disclose any conflicts of interest with corresponding management policies as per the MAS Notice on Fair Dealing and Customer Protection for Digital Payment Token Service Providers.

7. *Cybersecurity*: VASPs must establish a robust cybersecurity framework with dedicated teams, regular testing, and encryption to protect customer data as per the MAS Technology Risk Management Guidelines. VASPs must implement multi-factor authentication and conduct regular vulnerability assessments to safeguard against cyber threats as per the MAS Notice on Cybersecurity for Digital Payment Token Service Providers.

8. *User protection measures*: VASPs must take measures to safeguard customers' money against insider fraud and external threats, and ensure that customers are informed of their rights and the risks of the services provided as per the MAS Notice on User Protection for Digital Payment Token Service Providers.

9. *Safeguarding of customer money*: VASPs must comply with regulations around safeguarding customer funds, maintaining financial safeguards like escrow accounts, insurance, or financial guarantees to protect customer funds as per the MAS Notice on Safeguarding of Customer Money for Digital Payment Token Service Providers.

What are the main restrictions on VASPs in Singapore?

VASPs in Singapore are subject to several key restrictions, primarily explained in the PSA and the guidelines provided by the MAS.

1. *Licensing requirement*: As per the PSA, VASPs must obtain a license from the MAS to operate in Singapore. The licensing system is flexible and risk-based, with VASPs needing to meet certain financial and business conduct standards.
2. *Prohibited activities*: The PSA prohibits VASPs from engaging in certain activities. For instance, they can't provide credit to individuals in Singapore, use customer funds for their own business activities, or offer cash withdrawals in Singapore dollars from e-money accounts held by Singapore residents.
3. *AML/CFT measures*: VASPs are subject to strict AML and CFT regulations as per the PSA and the MAS Notice on Prevention of Money Laundering and Countering the Financing of Terrorism. They must conduct risk assessments, develop policies and controls to manage these risks, and report any suspicious transactions to the authorities.
4. *Technology and cyber hygiene*: The MAS's Technology Risk Management Guidelines and the PSA require VASPs to implement robust technology and cybersecurity measures to protect customer data, transactions, and systems.
5. *Overseas operations*: As given in the PSA, VASPs based in Singapore that offer digital token services outside of Singapore will be subject to licensing and supervision to ensure that the MAS has adequate oversight.
6. *Financial stability and risk management*: The PSA and the MAS's guidelines on risk management require VASPs to demonstrate financial stability and have strong risk management controls in place. These controls should be appropriate for the scale, nature, and complexity of their operations.

What are the main information that VASPs have to make available to its customers?

In Singapore, VASPs are required to provide their customers with essential information to help them make informed decisions. This is primarily given in the PSA, the MAS Notice on Disclosure and Transparency Requirements for Digital Payment Token Service Providers and MAS Notice on Fair Dealing and Customer Protection for Digital Payment Token Service Providers.

1. *Key conduct requirements*: VASPs, as regulated entities, must follow key conduct requirements that promote transparency and protect customer interests. These requirements ensure that VASPs operate in a fair and honest manner. For example, they must communicate with customers in a clear, fair, and not misleading manner.
2. *Transaction receipts*: VASPs are required to issue a receipt for every transaction with a customer who is an individual or sole-proprietor, or when the customer requests a receipt. The receipt must include details like the type of asset, the amount, the date and time, and any charges. It can be in paper or electronic form and may be a single receipt for each transaction or a consolidated receipt for all transactions over a specified period.
3. *Exchange rate information*: VASPs must disclose whether or not they offer an exchange rate at the point of transaction, and if the rate is determined by a third party. If a third

party determines the exchange rate, the VASP must disclose this information in writing to the customer.

4. *Essential information*: VASPs must disclose essential information to customers about their services, including the types of digital assets they offer, the terms and conditions, and any risks involved. For example, they must provide information on the key features and risks of the DPT, and the terms and conditions of the account or contract.
5. *Clear charges*: As per MAS Notice on Fair Dealing and Customer Protection for Digital Payment Token Service Providers, VASPs must have a clear fee structure. They must inform customers about any fees or charges for their services, like transaction fees, withdrawal fees, etc. For instance, they must disclose all fees and charges that the customer will or may have to bear, including any fees or charges that are not quantified at the time of disclosure.
6. *Account statements*: VASPs must give customers regular account statements. These should include all transaction details and the account balance at the start and end of the period.
7. *Conflicts of interest*: VASPs must disclose any conflicts of interest that may arise. They must also have policies to handle these conflicts fairly and transparently. For example, they must disclose to the customer the nature and/or source of the conflict of interest and the manner in which the DPT service provider intends to manage the conflict of interest.

What market misconduct legislation/regulations apply to virtual assets?

In Singapore, VASPs are subject to a comprehensive regulatory framework to prevent market misconduct and ensure integrity in the virtual asset sector. The key regulations and guidelines that apply to VASPs include:

1. ***PSA***: The PSA governs a wide range of payment service companies, including DPTSPs, which are VASPs in Singapore. The PSA sets compliance requirements for VASPs, including:
    1.1 *CDD*: Obligated companies are required to do KYC checks in order to identify and verify their users.
    1.2 *Transaction monitoring*: Obligated entities must keep an eye on counterparties to transactions for money laundering and terrorism financing red flags.
    1.3 *Screening*: Obligated entities must check users against sanctions lists, politically exposed persons (**PEPs**), and negative media.
    1.4 *Suspicious Activity Reports (**SARs**)*: A proper internal mechanism must be in place for operations to transmit SARs to the MAS. For AML/CFT inspections, companies must also retain thorough records of users.

    VASPs must register for a trading license and adhere to AML/CFT rules under the PSA.

2. ***SFA***: The SFA regulates securities and futures, including digital tokens considered securities or futures contracts. It prohibits:
    2.1 *Insider trading*: The use of non-public, price-sensitive information to trade in securities or futures contracts.
    2.2 *Market manipulation*: The creation of false or misleading appearances of active trading or the price of securities or futures contracts.
    2.3 *False or misleading statements*: The making of false or misleading statements that are likely to induce the purchase or sale of securities or futures contracts.
3. ***FAA***: The FAA regulates the provision of financial advisory services, including those related to digital tokens that are capital markets products. It prohibits:
    3.1 *False or misleading information*: The provision of false or misleading information that is likely to induce a person to enter into a contract for a financial product.
    3.2 *Failure to disclose conflicts of interest*: The failure to disclose any material interest, whether direct or indirect, which the financial adviser or any of its associates has in a financial product.
4. ***MAS Guidelines and Notices***: The MAS has issued various guidelines and notices to address market misconduct risks in the virtual asset space:
    4.1 *Notice on Prevention of Money Laundering and Countering the Financing of Terrorism for DPTSPs*: Sets out measures to combat illicit activities involving virtual assets.
    4.2 *Guidelines on Provision of Digital Advisory Services*: explains standards to prevent market misconduct in digital advisory services, such as the misuse of non-public information and manipulation of trading activities.
5. ***Unfair Trading Practices***: The MAS has proposed regulations to curb unfair trading practices in the digital asset market, including:
    5.1 False trading
    5.2 Market manipulation
    5.3 Fraud
    5.4 Insider trading

4. Regulation of other crypto-related activities in Singapore

Are managers of crypto funds regulated in Singapore?

Yes, managers of crypto funds in Singapore are subject to a comprehensive regulatory framework established by the MAS. Here are the key provisions and considerations:

1. *SFA*: Fund managers who manage or intend to manage funds investing in cryptocurrencies must hold a Capital Markets Services license under the SFA, unless exempted. If the fund is structured as a collective investment scheme (CIS), it must

comply with CIS regulations, including disclosure requirements and operational standards.

2. *FAA*: Managers offering financial advisory services related to crypto investments must be licensed under the FAA. This includes providing advice on the suitability of cryptocurrency investments.
3. *PSA*: If fund managers provide services involving digital payment tokens (e.g., facilitating the exchange of cryptocurrencies), they must be licensed under the PSA. This act mandates compliance with AML and CFT requirements.
4. *Compliance and Regulatory standards*: Fund managers must implement KYC procedures, report suspicious transactions to the Suspicious Transaction Reporting Office (STRO), and meet the MAS's fit and proper criteria, which assess their integrity, reputation, and competence. They must also have adequate risk management frameworks to manage operational risks, including those specific to crypto assets.
5. *Disclosure and Transparency*: Managers must provide clear and accurate information to investors, including the risks associated with cryptocurrency investments. Regular reporting to the MAS is required, ensuring transparency and regulatory oversight.
6. *Licensing and Registration process*: Applicants must submit a detailed business plan outlining their investment strategy, risk management processes, and compliance framework. The MAS evaluates the application based on the applicant's adherence to regulatory requirements and overall suitability.
7. *Ongoing compliance*: Licensed fund managers must undergo annual audits to ensure compliance with regulatory standards. The MAS conducts continuous monitoring and supervision to ensure ongoing adherence to regulations.

Are distributors of virtual asset funds regulated in Singapore?

In Singapore, the distribution of virtual asset funds is regulated by the MAS under the PSA and the SFA. Here are the key points of regulation:

1. *Licensing*: Companies that distribute virtual asset funds in Singapore must obtain a license from MAS. They are also required to follow rules on minimum capital, risk management, and business conduct.
2. *Disclosure and Risk management*: Companies must provide clear information to investors about the risks of virtual asset funds. They must also have proper risk management systems in place.
3. *Investor suitability*: MAS emphasises the importance of ensuring that virtual asset funds are suitable for investors, especially retail investors. Companies must make sure that investors understand the risks and can afford potential losses.
4. *AML/CFT*: Companies must follow AML/CFT regulations, such as verifying customers' identities and monitoring transactions for suspicious activity.

5. *Ongoing supervision*: MAS regularly inspects and monitors licensed companies to ensure compliance with regulations. Violations can result in fines or license revocations.

Following high-profile incidents such as the collapse of FTX, MAS has strengthened its regulatory framework. This includes introducing measures to restrict certain activities, such as prohibiting incentives for retail investors and requiring risk awareness assessments.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Singapore?

In Singapore, intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets are subject to regulatory requirements set by the MAS. These requirements include:

1. *Licensing*: Intermediaries must obtain a Capital Markets Services license from MAS to provide trading services or advice on virtual assets.
2. *Compliance*: Intermediaries are required to comply with AML/CFT regulations to prevent illicit activities in virtual asset transactions.
3. *Risk management*: Proper risk management frameworks must be in place to identify, monitor, and mitigate risks associated with trading or advising on virtual assets.
4. *Investor protection*: Intermediaries must ensure that clients, especially retail investors, are provided with adequate risk disclosures and have a good understanding of the risks involved in virtual asset investments.
5. *Regulatory oversight*: MAS conducts regular inspections and monitoring of licensed intermediaries to ensure compliance with regulations and protect investors.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in Singapore?

Singapore's MAS is planning to introduce new rules for crypto-related activities, which will mainly focus on custodial services and cross-border transfers. These rules will require crypto service providers to maintain proper records, have effective control systems, and keep customers' assets in a trust account.

The new regulations are expected to come into effect within six months from April 4, 2024. Existing crypto-related businesses will need to apply for a license within six months to continue their operations temporarily until their application is reviewed.

These changes aim to address regulatory gaps and promote stability in the crypto ecosystem, especially after the recent volatility and turmoil in the crypto market, such as the FTX crash.

Additionally, MAS has already introduced licensing requirements for entities providing custodial and other services, including the facilitation of cross-border money transfers and the transmission of crypto between accounts and exchanges.

MAS is working on enhancing regulatory clarity and fostering innovation in the crypto industry. For instance, it has recently allowed a crypto exchange with an automatic market-making mechanism to obtain full licenses.

Has there been any notable events in Singapore that has prompted regulatory change recently?

One of the most significant events was the collapse of the FTX cryptocurrency exchange in 2022. This incident highlighted the risks associated with the crypto industry and led to increased scrutiny and regulatory responses globally, including in Singapore.

In response to the FTX collapse and other similar incidents, the MAS announced several regulatory updates. These updates include restrictions on crypto firms offering incentives to retail investors, prohibitions on leveraged or debt-financed crypto transactions for retail clients, and mandatory risk awareness assessments for retail investors.

MAS has also introduced stringent guidelines for DPTSPs, focusing on technology risk management and operational resilience. These measures aim to safeguard against technological failures and cyber threats, ensuring that crypto service providers maintain high standards of security and reliability.

Additionally, a Singapore-based crypto exchange called DigiFT got full approval from MAS after testing their system. This is a big step towards regulated crypto trading in Singapore.

6. Pending litigation and judgments related to virtual assets in Singapore (if any)

Judgements:

1. ByBit Fintech Ltd v Ho Kai Xin and others (2023): In this case, the Singapore High Court made significant rulings regarding the legal status of crypto assets. ByBit Fintech Ltd, a cryptocurrency trading platform, alleged that Ho Kai Xin, an employee, had misappropriated a substantial amount of USDT (Tether), a type of stablecoin. The court ruled that crypto assets like USDT are considered property under Singaporean law, meaning they can be legally owned, transferred, and protected. Additionally, the court established that crypto assets can be held in trust, allowing for their use in various financial transactions and arrangements. The court also affirmed that holders of crypto assets have recognisable property rights that can be enforced through court orders, providing legal remedies in cases of disputes or misappropriation.
2. B2C2 Ltd v Quoine Pte Ltd [2019] SGHC(I) 03: This landmark case involved a dispute between cryptocurrency market maker B2C2 and cryptocurrency exchange Quoine. The dispute arose from a series of automated trades that B2C2 executed on Quoine's platform, resulting in significant financial gains for B2C2 due to an error in Quoine's software. Quoine subsequently reversed the trades, leading B2C2 to sue for breach of

contract. The Singapore International Commercial Court (SICC) ruled in favor of B2C2, establishing important precedents regarding the enforceability of smart contracts and the duties of cryptocurrency exchanges.

3. CLM v CLN [2022] SGHC 46: This case involved a dispute over the misappropriation of cryptocurrency assets. The plaintiff sought to recover Bitcoin and Ethereum assets from the defendant, who allegedly wrongfully transferred these assets. The court granted a proprietary injunction to freeze the defendant's assets, demonstrating the judiciary's willingness to extend traditional legal remedies to digital assets.
4. Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE"): The Singapore High Court issued its judgment granting a worldwide freezing injunction to prevent the sale or transfer of a non-fungible token owned by Janesh, which was used as collateral for cryptocurrency loans. This landmark decision recognized NFTs as a form of property that can be protected by legal injunctions, even when the defendant is known only by a pseudonym. The court addressed several procedural issues, including its jurisdiction to hear the case despite the defendant's anonymity and the adequacy of the plaintiff's description of the defendant.

7. Government outlook on virtual assets and crypto-related activities in Singapore

Singapore's government adopts a progressive yet cautious approach to virtual assets and crypto-related activities. They strive to balance innovation and potential risks, such as consumer protection and anti-money laundering. Cryptocurrencies are not considered legal money in Singapore, but they can be used as an alternative payment method.

The MAS oversees virtual assets in the country. They have established the PSA to govern digital payment token services, ensuring compliance with international standards. The PSA requires VASPs to obtain a license and follow strict AML/CFT measures, which helps maintain high security and compliance standards.

Singapore's regulatory stance is influenced by the FATF guidelines. This ensures that Singapore's virtual asset regulations are in line with global best practices. Here's an analysis of how Singapore aligns with FATF provisions, categorised by fully, partially, and not complied with:

FATF Recommendation	Description	Compliance Status	Details
CDD and Record Keeping (R10, R11, R12)	Requirements for verifying identities and maintaining records	Fully Complied	Singapore has stringent CDD requirements for VASPs, including verifying customer and beneficial owner identities and maintaining records for at least five years.
Suspicious Transaction Reporting (R20)	Reporting suspicious transactions to authorities	Fully Complied	VASPs are mandated to report suspicious transactions to the Suspicious Transaction Reporting Office.
International Cooperation (R36-R40)	Cooperation with international authorities and mutual legal assistance	Fully Complied	Singapore has mutual legal assistance treaties with numerous countries and participates in global initiatives to combat financial crimes.
Regulatory and Supervisory Regime (R26, R27)	Oversight and regulation of financial institutions	Fully Complied	The Monetary Authority of Singapore (**MAS**) provides robust oversight and regulation of VASPs, ensuring compliance with AML/CFT measures.
Preventive Measures (R4-R9)	Measures to counter money laundering and terrorist financing	Fully Complied	Includes regulations on wire transfers, reliance on third parties, and internal controls to prevent money laundering and terrorist financing.
Beneficial Ownership Transparency (R24, R25)	Transparency of beneficial ownership information	Partially Complied	Singapore has made strides in capturing beneficial ownership information but faces challenges with complex corporate structures.
Risk Assessment and National Cooperation (R1, R2)	National risk assessments and domestic cooperation	Partially Complied	Singapore conducts national risk assessments and has mechanisms for cooperation but needs ongoing improvement to address evolving risks.
AML/CFT Policies and Coordination (R2)	Coordination of AML/CFT policies among regulatory bodies	Partially Complied	Policies are in place, but further coordination among regulatory and enforcement bodies is needed for enhanced effectiveness.
Virtual Assets and VASPs (R15)	Regulation of virtual assets and VASPs	Not Fully Complied	Regulations for VASPs are in place, but the rapidly evolving nature of virtual assets presents challenges in comprehensive oversight and enforcement
New Technologies (R15)	Adaptation to advancements in financial technologies	Not Fully Complied	Continuous advancements in financial technologies require more dynamic and responsive regulatory frameworks.

8. Advantages of setting up a VASP in Singapore

Here are the key advantages of setting up a VASP in Singapore:

1. *Clear regulatory environment*: The MAS has established a regulatory framework for VASPs through the PSA. This clear regulatory environment helps businesses understand and comply with the rules.
2. *Taxation benefits*: Singapore offers a competitive corporate tax rate, which is advantageous for businesses. Additionally, there is no capital gains tax in Singapore. This tax structure is particularly beneficial for VASPs dealing with digital assets.
3. *Extensive financial infrastructure*: Singapore has an extensive financial infrastructure, with a mature financial ecosystem and strong banking infrastructure. This infrastructure can provide necessary support for VASPs. Moreover, being a global financial hub, Singapore provides easy access to international markets.
4. *Strategic location and connectivity*: Singapore's strategic location and connectivity are advantageous for businesses. It is located at the crossroads of Asia, providing excellent

connectivity and access to major markets in the region. Additionally, its time zone overlaps with major global financial centers, facilitating seamless business operations.

5. *Government support for fintech innovations*: The government is highly supportive of fintech innovations. It has established various initiatives to encourage the growth of the digital asset industry. There are also various grants and funding opportunities available for fintech and digital asset companies.
6. *Legal and operational certainty*: The legal framework for VASPs in Singapore is well-defined, and the process of obtaining a VASP license is streamlined and efficient. This legal and operational certainty reduces the compliance burden for businesses.
7. *Highly skilled and diverse workforce*: Singapore has a highly skilled and diverse workforce, with expertise in finance, technology, and regulatory compliance. The presence of world-class educational institutions ensures a continuous supply of talent equipped with the necessary skills for the digital asset industry.
8. *Strong emphasis on cybersecurity*: Singapore places a strong emphasis on cybersecurity. It has stringent regulations and frameworks in place to protect digital asset transactions and data. The MAS provides rigorous oversight to ensure that VASPs maintain high standards of security and operational integrity.
9. *Enhanced credibility and consumer confidence*: Singapore's reputation as a stable and well-regulated financial center enhances the credibility of VASPs operating from the country. High regulatory standards encourage consumer confidence, which is crucial for the growth and adoption of digital asset services.

May 2024

~CQ~

Caribbean

Antigua & Barbuda

1. Digital asset laws and regulations in the Antigua & Barbuda

In Antigua and Barbuda, the regulatory landscape for digital assets is governed by a series of key legislations enacted to ensure transparency, security, and compliance within the industry. The Digital Assets Business Act of 2020 (**DABA**), along with the Digital Asset Business Regulations of 2021, lay down the foundational framework for overseeing digital asset businesses, providing guidelines on licensing, operational standards, and reporting requirements.

Complementing these laws are the Antigua and Barbuda's Securities Act of 2020, which addresses the regulation of digital securities, and the Antigua and Barbuda's Investment Funds Act of 2020 (**IFA**), governing investment funds dealing with digital assets. The Antigua and Barbuda's Money Laundering (Prevention) (Amendment) Act of 2021 (**MLPA**) reinforces anti-money laundering measures specific to digital asset businesses, enhancing regulatory oversight and risk mitigation efforts. Together, these legislations form a comprehensive regulatory environment, fostering responsible growth and innovation while ensuring investor protection and maintaining the integrity of the financial system.

What is considered a digital asset in the Antigua & Barbuda?

According to the DABA, a digital asset is defined as "*anything that exists in binary or digital format and comes with the right to use it and includes, but is not limited to, a digital representation of value that is used as a medium of exchange, money, unit of account, or store of value and is not legal tender, whether or not denominated in legal tender; is intended to represent assets such as debt or equity of any person or entity; is otherwise intended to represent any commodity, security, assets or rights associated with such commodity, security or assets or a derivative thereof; or is intended to provide access to or benefit of an application or service or product by means of distributed ledger technology.*"

A digital asset does not include transactions in which a person grants value as part of an affinity or rewards program that value cannot be taken from or exchanged with the person for legal tender, bank credit, or any digital asset and also does not include a digital representation of value issued by or on behalf of the publisher and used within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

Who do such laws and regulations apply to?

According to the Antigua and Barbuda's DABA, the laws and regulations apply to any person or entity that carries on a digital asset business in or from within Antigua and Barbuda, unless the entity is owned by the Antigua and Barbuda Government.

Digital asset business (**DABs**) as a business that provides any of the listed digital asset services as follows:

1. Issuing, selling, or redeeming digital coins, tokens, or any other form of digital asset;
2. operating as a payment service provider business utilizing digital assets which includes the provision of services for the transfer of funds and holding funds in connection with digital asset transactions;
3. operating as an exchange;
4. providing custodial wallet services;
5. providing digital asset custody service;
6. operating as a digital assets services vendor;
7. lending, borrowing, providing financial services, advising, or issuing derivatives with respect to, and otherwise dealing with digital assets;
8. special-purpose depository services; or
9. reasonably ancillary activities in connection with the above activities.

Who are the relevant regulatory authorities in relation to digital assets in the Antigua & Barbuda?

The Financial Services Regulatory Commission (**FSRC**) is supervisory and regulatory authority over digital asset businesses and the Inland Revenue Department (**IRD**) of the Government of Antigua & Barbuda oversees tax compliance.

What are the penalties for breaches of digital asset laws and regulations in the Antigua & Barbuda?

The DABA states that a person who commits an offence against any provision of the DABA for which a penalty is not provided may be fined an amount not exceeding $25,000 or imprisonment for a term not exceeding two years, or both. For specific offences, the DABA specifies the penalties as follows:

1. A licensed undertaking that fails to prepare the annual audited financial statements and accounts as required under Section 41 of the Act, commits an offence and is liable to a fine of $25,000 on summary conviction.
2. A licensed undertaking that intentionally issues false or misleading documents or information commits an offence and is liable to a fine of $50,000 or imprisonment for a term not exceeding two years, or both.
3. A licensed undertaking that carries on digital asset business in Antigua and Barbuda without a license commits an offence and is liable to a fine of $250,000.
4. A person who obstructs an investigation under the Act may be fined $5,000 or to imprisonment for a term not exceeding six months, or both.
5. A licensed undertaking that fails to appoint an auditor as required commits an offence and is liable to a fine of $25,000.
6. A person who intentionally obstructs the exercise of any right conferred by a warrant commits an offence and is liable to a fine of $50,000 or to imprisonment for a term not exceeding two years, or both.

2. Regulation of digital assets and offerings of digital assets in the Antigua & Barbuda

Are digital assets classified as 'investments' or other regulated financial instruments in the Antigua & Barbuda?

Digital assets are not classified as securities for the purposes of securities law. However, this does not mean that they cannot be subject to regulation under the DABA, and other laws and regulations that may apply to digital assets.

Are stablecoins and NFTs regulated in the Antigua & Barbuda?

The DABA defines digital assets to include digital coins, tokens, or any other form of digital asset. This would include stablecoins and NFTs, which are both forms of digital assets. Therefore, stablecoins and NFTs businesses operating in Antigua and Barbuda may be subject to licensing and regulation under the Act. However, it is important to note that specific regulations and requirements may vary depending on the particular type of digital asset business, their size, complexity and characteristics.

Are decentralised finance (DeFi) activities (e.g. lending digital assets) regulated in the Antigua & Barbuda?

According to the Antigua & Barbuda's DABA, carrying on the business of lending, borrowing, providing financial services, or issuing derivatives with respect to, and otherwise dealing with digital assets are likely to fall under the category of regulated activity and might requires licensing under Antigua & Barbuda's DABA. Therefore, decentralized finance (DeFi) activities that involve lending digital assets would likely be subject to regulation and

licensing under the DABA if it involves carrying on a business in or from within Antigua and Barbuda.

Are there any restrictions on issuing or publicly offering digital assets in the Antigua & Barbuda?

Yes, there are restrictions on issuing or publicly offering digital assets in Antigua and Barbuda. According to the DABA and regulations, a licensed undertaking shall not participate in or provide financial services related to the issue or offer for sale of a newly issued digital asset without submitting a prospectus to the FSRC for approval at least 30 days before the proposed date of its publication, approval of the prospectus by the FSRC and publishing the approved prospectus prior to the issue or offer for sale as may be required by the FSRC. In addition, the DABA requires that the prospectus includes specific information, including but not limited to, the issuer's general description of business, personnel and project planning, key features of the product or service to be developed, proposed market participants and proposed jurisdiction or jurisdictions, technology to be used, means by which the offering will be financed, and the amount of money equivalent that the offering is intended to raise. The DABA also requires there to be an assessment to include information in addition to the prospectus if the Commission considers it necessary.

Are there any exemptions to the restrictions on issuing or publicly offering of digital assets in the Antigua & Barbuda?

According to the Digital assets regulations in the Antigua & Barbuda there are exemptions to the restrictions on issuing or publicly offering digital assets in or from within Antigua and Barbuda. The crypto regulation i.e. DABA and regulations gives provisions of exemption if the Minister, acting on the advice of the FSRC, issues an exemption order, which provides for a specified person or persons or entities falling within a specified class, to be exempt from the requirement of section 18 of DABA. An exemption order may provide for an exemption to have effect in respect of all digital asset business activities under section 2(2) OF daba or only in respect of one or more of the digital asset business activities or in respect of specified circumstances. An exemption order may be subject to conditions and is subject to the negative resolution procedure.

3. Regulation of DABs in the Antigua & Barbuda

Are DABs operating in the Antigua & Barbuda subject to regulation?

DABs and Crypto Businesses operating in the Antigua & Barbuda are subject to regulation. Any person who wishes to operate a digital assets business in the Antigua & Barbuda needs to obtain a Digital Assets License. DABs are required to comply with the regulations set out in the DABA and the Digital Assets Business Regulations 2021. The licensing is a mandate unless exempted and covers all the regulatory areas such as record keeping requirements,

disclosure requirements, licensing requirements, and ongoing obligations of licensed undertakings.

Are DABs providing digital asset services from offshore to persons in the Antigua & Barbuda subject to regulation in the Antigua & Barbuda?

Yes, any offshore DAB that wishes to provide digital asset services to persons in the Antigua & Barbuda will need to be registered or licensed with the FSRC based on the nature of services rendered by DABs and the requirements associated with it the Act.

What are the main requirements for obtaining licensing / registration as a DAB in the Antigua & Barbuda?

The main requirements for obtaining a license as a Digital Assets Business (**DAB**) in the Antigua & Barbuda are:

1. Submitting an application form for a DAB license, as set out in FORM 1 of the regulations;
2. payment of the applicable non-refundable application fee, as set out in the Schedule of Fees contained in Schedule II;
3. completing and submitting the supporting documents as set out in the application Form and the regulations, and such other documents as may be requested by the FSRC;
4. being subjected to a due diligence procedure determined by the FSRC;
5. the licensed undertaking must comply with all of the requirements of its license, maintain minimum risk capital set out in its Application Form based on the licensed undertaking's client assets under management from time to time, payment of the renewal of a license fee, and conduct an internal technological audit at least annually; and
6. complying with such other requirements the Commission determines to be in the best interest of the beneficial owners of the digital assets held by the licensed undertaking.

Additionally, specific requirements and information depending on the type of digital assets business model (Payment Services Provider, Digital Asset Exchange, Digital Asset Services Vendor, Custodial Wallet Services Provider, Digital Asset Custody Services Provider, Special Purpose Depository Services) must be submitted and met to obtain a license and operate as a DAB.

Initial application fee	Amount
Application for registration as a DAB (Non-refundable)	$20,000
Due diligence for each director, manager, officer or shareholder	$6,800
Application fee for Sandbox license	$10,000
Fee for extension of Sandbox license	$10,000

Annual license fee

Type of activity		Turnover of up to $1M	$1 million - $5 million	Above $ 5 million
Payment Services Provider	Annual License fee	$20,000	$25,000	$30,000
	Statutory Deposit	$50,000	$70,000	$100,000
Digital Asset Services Vendors	Annual License fee	$20,000	$25,000	$30,000
	Statutory Deposit	$50,000	$70,000	$100,000
Custodial Wallet Services Provider	Annual License fee	$20,000	$25,000	$30,000
	Statutory Deposit	$50,000	$70,000	$100,000
Digital Asset Custody Services Provider	Annual License fee	$20,000	$25,000	$30,000
	Statutory Deposit	$50,000	$70,000	$100,000
Special Purpose Depository Service	Annual License fee	$20,000	$25,000	$30,000
	Statutory Deposit	$50,000	$70,000	$100,000
Digital Asset Exchanges	Annual License fee	$50,000	$60,000	$70,000
	Statutory Deposit	$100,000	$200,000	$300,000

What are the main ongoing requirements for DABs regulated in the Antigua & Barbuda?

The main ongoing requirements for Digital Assets Businesses (DABs) regulated in Antigua and Barbuda are as follows:

1. Maintain minimum risk capital, which should be held in cash, line of credit from a bank, or liability insurance, and deposited with the Commission as determined by the Commission;
2. conduct an annual internal technological audit if the DAB is a payment services provider, a digital asset exchange, or a digital asset custody services provider. In case any deficiencies are detected, notify the Commission of the deficiencies and proposals for redress;
3. notify the clients of any cyber reporting event, including the impact on the particular client's assets, and promptly notify the Commission of any transaction requests that the licensed undertaking believes could violate the Prevention of Terrorism Act 2005, The Money Laundering (Prevention) Act 1996, or The Proceeds of Crime Act 1993;
4. file quarterly and annual returns as directed by the regulations;
5. disclose publicly on its website that it is a licensed entity, the fees charged by the licensed undertaking and any third party to which functions have been outsourced to participants, if it is a digital asset exchange, the types of orders that may be placed on the digital asset exchange and the terms of each, and the rules for participants to access the digital asset exchange;
6. conduct market surveillance regarding the trades on the digital asset exchange to ensure maintenance of the integrity of the market.

What are the main restrictions on DABs in the Antigua & Barbuda?

The main restrictions on DABs in the Antigua & Barbuda are:

1. Unless granted an exemption in advance by the FSRC, no digital asset may be offered or sold to persons in the Antigua & Barbuda without registration or an exemption from registration in accordance with the Securities Act of Antigua & Barbuda;
2. no DAB shall engage in any activity related to digital currencies outside Antigua & Barbuda or permit its activities to have any effect outside Antigua & Barbuda;
3. no DAB or its employees, agents, or intermediaries shall engage in any market manipulation, insider trading, or fraudulent conduct, including misleading or deceptive conduct;
4. DABs shall not disclose a client's confidential information except where required by law, or where they have obtained the written consent of the client.

What are the main information that DABs have to make available to its customers?

In the event of an unlawful interference or if the client's digital assets are compromised, the VASP must notify its customer of such circumstances and further inform the client of the steps it has taken or is taking to restore the client's digital asset and protect the digital assets from any further unlawful interference or from otherwise being compromised.

A VASP providing custodian services must enter into safekeeping arrangements with the owner of a digital asset and related instruments which should set out relevant including, amongst others, the duration, terms of renewability, manner of holding, transaction engagement conditions, required disclosures on associated risks and the steps taken to mitigate them, fees, terms of client access, termination conditions, provision of security measures information, available remedies in case of theft or loss, and any other matters agreed upon by the client and the VASP or specified by the FSC from time to time.

The main information that DABs have to make available to their customers as per Antigua & Barbuda's Digital Assets rules and regulation are:

1. That it is a licensed entity;
2. the fees charged by the licensed undertaking and any third party to which functions have been outsourced to participants including for listing and trading;
3. if it is a digital asset exchange, the types of orders that may be placed on the digital asset exchange and the terms of each; and the rules for participants to access the digital asset exchange.;
4. the manner in which the digital assets are to be held;
5. the transactions that the custodian is permitted to engage in, which may include lending, borrowing, providing financial services, or issuing derivatives with respect to, and otherwise dealing with, digital assets, and the manner in which the transactions are to be conducted;
6. disclosures relating to the risks present in the safekeeping of the digital assets and any mitigating factors;
7. fees, spreads, or other remuneration to the custodian;

8. the manner in which the client may access the digital assets and how the custodial arrangement may be terminated;
9. information related to the licensed undertaking's security safeguards; and
10. remedies available to the owner upon the unforeseeable loss of the digital assets by the custodian.

What market misconduct legislation/regulations apply to digital assets?

The misconduct legislation that applies to digital assets in the Antigua & Barbuda include:

1. The Prevention of Terrorism Act, 2005 which criminalizes the financing of terrorism.
2. The Money Laundering (Prevention) Act, 1996 which criminalizes the laundering of the proceeds of criminal conduct in the Antigua & Barbuda and internationally.
3. The Proceeds of Crime Act, 1993 which provides for the tracing, forfeiture, and confiscation in respect of the proceeds of crime.
4. The DAB Regulations, 2021 which prevent DABs or their employees, agents, or intermediaries from engaging in any market manipulation, insider trading, or fraudulent conduct, including misleading or deceptive conduct.
5. The Securities Act of Antigua & Barbuda, which requires that any digital asset sold to persons in the Antigua & Barbuda be registered or exempted from registration.

These pieces of legislation aim to ensure that digital assets are not used for illicit purposes and promote a regulated, secure, and transparent digital asset ecosystem in the Antigua & Barbuda.

4. Regulation of other crypto-related activities in the Antigua & Barbuda

Are managers of crypto funds regulated in the Antigua & Barbuda?

Yes, managers of crypto funds are regulated in Antigua and Barbuda. The DABA defines a "digital asset fund administrator" as a person who conducts the business of managing digital asset funds. Such a person is required to have a license from the Office of National Drug and Money Laundering Control Policy (**ONDCP**), which is an administrative sub-unit within the Prime Minister's Ministry and acts as the Supervisory Authority for financial institutions under the MLPA. It is also responsible for enforcing Antigua and Barbuda's Prevention of Terrorism Act (**PTA**), including its provisions related to combating the financing of terrorism.

In addition, as per the DAB Regulations, 2021, any person or entity carrying on the business of a fund administrator must comply with the regulations for Digital Assets Businesses (DABs), including those related to licensing, record-keeping, and ongoing obligations.

Are distributors of digital asset funds regulated in the Antigua & Barbuda?

Yes, distributors of digital asset funds are regulated in Antigua and Barbuda. According to the DABA, a "digital asset service vendor" means a person who carries on the business of distributing, selling, or transferring digital assets.

An applicant seeking to carry on the business of distributing, selling, or transferring digital assets must submit an application for a license to the ONDCP, which is an administrative sub-unit within the Prime Minister's Ministry and acts as the Supervisory Authority for financial institutions under the MLPA. It is also responsible for enforcing Antigua and Barbuda's PTA along with the digital asset business sector in Antigua and Barbuda. The applicant must also comply with the necessary requirements for obtaining a license, which include submitting to a background check and demonstrating that they have the necessary qualifications and experience to carry on the business of a digital asset service vendor.

Furthermore, in accordance with the DAB Regulations, 2021, digital asset service vendors are required to comply with various regulations related to licensing, record-keeping, ongoing obligations, and disclosures, including those related to the protection of client assets and the prevention of money laundering and terrorist financing.

Therefore, distributors of digital asset funds are subject to regulation in Antigua and Barbuda, and they must comply with the relevant laws and regulations related to digital asset business activities.

Are there requirements for intermediaries seeking to provide trading in digital assets for clients or advise clients on digital assets in the Antigua & Barbuda?

Yes, there are requirements for intermediaries seeking to provide trading in digital assets for clients or advise clients on digital assets in Antigua and Barbuda.

The DABA defines a digital assets business as including, but not limited to, carrying on the business of a digital asset exchange, a digital asset custodian, a digital asset broker, a digital asset dealer, a digital asset fund administrator, and a digital asset service vendor.

Persons or entities who wish to carry on the business of trading in digital assets for clients or advising clients on digital assets must obtain a license from the ONDCP, which is the regulatory body responsible for overseeing the digital asset business sector in Antigua and Barbuda.

In addition, in accordance with the DAB Regulations, 2021, licensees are required to comply with various regulations related to licensing, record-keeping, ongoing obligations, and disclosures, including those related to the protection of client assets and the prevention of money laundering and terrorist financing.

Therefore, intermediaries seeking to provide trading in digital assets for clients or advise clients on digital assets are subject to regulation in Antigua and Barbuda.

5. Pending litigation and judgments related to digital assets in the Antigua & Barbuda (if any)

The courts of Antigua and Barbuda have not specified there view or adjudicated any matter related to digital assets.

6. Government outlook on digital assets and crypto-related activities in the Antigua & Barbuda

Antigua and Barbuda has become a top choice for digital asset businesses. With its stable economy, strategic location, and straightforward regulations, it's an attractive spot for entrepreneurs. The quick licensing process, tax benefits, and skilled workforce add to its appeal. Plus, its Digital Asset Business License offers legitimacy and access to global markets. As the cryptocurrency industry grows, Antigua and Barbuda offers a promising environment for business growth.

7. Advantages of setting up a DABs in the Antigua & Barbuda

The main advantages of setting up a DABs in the Antigua & Barbuda are:

1. Antigua and Barbuda has developed an intricate yet flexible regulatory framework for digital asset-related businesses. This framework provides clarity and stability for businesses operating in the cryptocurrency space, fostering confidence among investors and entrepreneurs. The streamlined process for obtaining digital asset licenses in Antigua and Barbuda enables businesses to enter the market rapidly, allowing them to capitalize on opportunities without significant delays.
2. *tax benefits*

   The absence of taxes on capital gains in Antigua and Barbuda makes it an attractive location for establishing a digital asset business. This favorable tax environment helps businesses minimize their tax burden and maximize their profits.
3. The Antigua Digital Asset Business License not only provides legitimacy but also grants holders access to global markets, including international exchanges and payment services based on blockchain technology. This recognition enhances the credibility of businesses operating in the cryptocurrency space and facilitates their integration into the global digital economy.

March 2024

~CQ~

Bahamas

1. Digital asset laws and regulations in Bahamas

The Bahamas established itself as a pioneer in digital asset regulation, becoming one of the first jurisdictions to introduce legislation for Digital Asset Businesses in 2020. The Digital Assets and Registered Exchanges Act, 2020 brought into force on 14 December 2020, set the foundation for regulating the issuance, sale, and trade of digital assets. The commission found some gaps in the existing legislation and to cure these defects introduced the Digital Assets and Registered Exchanges Act, 2024 (**DARE Act, 2024**), the previous legislation has been repealed. DARE 2024 governs the issuance, sale, and trade of digital assets both within The Bahamas and for entities operating from the jurisdiction. It also sets out the process for registering any individual or entity involved in digital asset businesses (**DABs**) or as digital asset service providers (**DASPs**). This legislation creates a clear regulatory structure, ensuring that all virtual asset offerings and related activities meet defined standards. DABs operating in The Bahamas must comply with legislation such as the Proceeds of Crime Act, 2018, the Anti-Terrorism Act, 2018, Securities Industry Act, 2024 and the Financial Transactions and Reporting Act, 2018.

In addition, DABs must adhere to the Digital Assets and Registered Exchanges (Anti-Money Laundering and Countering the Financing of Terrorism) Rules, 2022, which provide guidelines on AML/CFT compliance for digital asset businesses. Adhering to these laws is crucial for DABs to establish and maintain effective AML/CFT programmes, helping to prevent financial crimes and maintain the integrity of the digital asset sector in The Bahamas. This progressive approach reinforces The Bahamas' position as a leading jurisdiction for digital asset regulation, ensuring that businesses can operate in a transparent and secure environment.

What is considered a digital asset in Bahamas?

The Digital Assets and Registered Exchanges Act, 2024 defines a digital asset as any value or right that can be transferred and stored electronically, typically using blockchain or similar technology. This definition covers a range of assets, from cryptocurrencies to tokenized assets, and other digital financial products.

The Act identifies several types of digital assets. One is asset tokens, which represent a claim against an issuer and are often backed by real-world assets. These tokens get their value from the underlying asset, making them more stable. Another type is digital asset derivatives, which are contracts that rely on the value of another digital asset, like options or futures, and are used for investment or trading purposes.

Digital currencies, such as government-backed digital money, are also included under the Act. These work like regular currency but are entirely digital. Non-fungible tokens (**NFTs**) are unique digital items, like digital art or collectibles that cannot be swapped one-for-one because each is different. stablecoins are digital assets designed to have a stable value by being tied to things like fiat currency or other assets, reducing the price swings seen with other cryptocurrencies.

In simple terms, the Act regulates all types of digital assets, ensuring they are securely managed and traded within The Bahamas. This allows for innovation while protecting users and promoting trust in the growing digital economy.

Who do such laws and regulations apply to?

This comprehensive Act applies to a broad spectrum of participants, including businesses that operate cryptocurrency exchanges, facilitate digital payments, or offer services such as digital asset custody, trading, and advisory. Whether you're issuing digital tokens, trading on exchanges, or managing digital portfolios, compliance with these regulations is essential. The Act meticulously governs everything from initial coin offerings (**ICOs**) and token sales to stablecoins and digital asset derivatives, ensuring all players operate with integrity and accountability. Specifically, it targets:

1. *Digital Asset Businesses*: Any business that deals with digital assets, such as cryptocurrency exchanges, payment service providers, or entities offering digital asset custody, trading, or management services. These businesses must be registered and follow specific regulations, including financial requirements, reporting, and data protection.
2. *Issuers of Digital Assets*: This includes any entity or individual that creates, sells, or offers digital assets (like tokens or stablecoins) to the public. They must comply with rules on disclosure, registration, and ensuring the security and backing of the assets they issue.
3. *Investors and Purchasers*: People or organizations that buy, trade, or hold digital assets within The Bahamas are also covered by the Act. This ensures that they engage with regulated entities and have protection from fraudulent or unfair practices.

4. *Token Offering Participants*: Any individual or group involved in the formation, promotion, sale, or redemption of tokens must operate in accordance with the Act. This includes organizers, founders, or those participating in token sales.
5. *Service Providers Related to Digital Assets*: Professionals like auditors, advisors, or legal representatives who assist in managing or advising on digital assets are also impacted by the Act if their work relates to registered digital asset businesses or offerings.

Who are the relevant regulatory authorities in relation to digital assets in Bahamas?

The Securities Commission of The Bahamas is the primary authority overseeing digital assets under the Digital Assets and Registered Exchanges Act, 2024. The SCB is responsible for the registration, licensing, and regulation of digital asset businesses, ensuring compliance with anti-money laundering and counter-financing of terrorism laws. It also issues guidelines and rules for the proper conduct of these businesses, including overseeing token offerings and stablecoin issuance. Additionally, the SCB protects investors by promoting transparency and preventing fraud or market manipulation. Collaborating with bodies like the Central Bank of The Bahamas and the Bahamas' Financial Intelligence Unit (**FIU**), the SCB ensures a secure and compliant digital asset landscape.

The Central Bank of The Bahamas is responsible for the supervision of supervised financial institutions such as digital assets operating in and from within The Bahamas. Therefore, SFIs that are jointly supervised entities are expected to adopt the more conservative approach where there are conflicts between the Central Bank's guidelines and any requirements outlined by the SCB.

What are the penalties for breaches of virtual asset laws and regulations in Bahamas?

The DARE Act, 2024 outlines penalties such as fines, suspension of operations, and revocation of registrations, but it does not provide specific monetary amounts for fines directly within the text of the Act. Instead, the exact monetary value of penalties is typically determined by the Securities Commission of The Bahamas, which has the authority to impose fines based on the severity and nature of the violation.

The Commission may set these penalties through subsequent regulations or guidelines, which could outline fine ranges or minimum amounts, based on the type of breach, such as failure to comply with financial reporting requirements, engaging in insider trading, or market manipulation. These fines are usually calculated depending on factors like the financial impact of the violation or the size of the business involved.

The table below sets out the main offences for contravention of the DARE Act:

Violation Type	Penalties	Relevant Provisions	Brief Description of Violation
Failure to Register Digital Asset Business	Fines and revocation of registration	Section 9 (Registration of Digital Asset Business)	Operating a digital asset business without proper registration.
Operating Without Sufficient Financial Solvency	Suspension of operations and fines	Section 15 (Financial Reporting Requirements)	Failing to maintain adequate financial solvency or liquidity for operations.
Insider Trading	Criminal charges, imprisonment, and fines	Section 68 (Inside Information)	Using non-public, material information to trade digital assets for personal gain.
Market Manipulation	Market ban, fines, and criminal charges	Section 71 (Prohibition of Market Manipulation)	Engaging in activities to distort market prices or deceive other market participants.
Non-compliance with AML/CFT Requirements	Fines and suspension of business operations	Section 33 (AML/CFT Prevention Measures)	Failure to comply with anti-money laundering or counter-terrorism financing regulations.
Issuing Unapproved Stablecoin	Revocation of registration and fines	Section 49 (Requirements for Stablecoins)	Issuing stablecoins without obtaining the necessary approval from the Securities Commission.
Failure to Submit Required Financial Reports	Fines and administrative sanctions	Section 15 (Financial and Other Reporting Requirements)	Failing to submit the required financial statements or reports to the Securities Commission.

2. Regulation of virtual assets and offerings of virtual assets in Bahamas

Are virtual assets classified as 'investments' or other regulated financial instruments in Bahamas?

Under the Securities Industry Act, 2024 and the Digital Assets and Registered Exchanges Act, 2024, the classification of virtual assets in The Bahamas is based on their characteristics and usage, not automatically as "investments" or financial instruments. The Bahamas Test helps determine when a digital asset is decentralized enough to avoid being classified as a security. "Sufficiently decentralized" refers to the point at which a digital asset, project, or platform can operate independently without the need for ongoing intervention or control from its creators or any central authority. The key question the test asks is whether the asset would still function if its creators stopped working on it. If the answer is yes, then the asset is considered "sufficiently decentralized," reducing the risk of fraud and indicating it's not a security. This suggests that there is no ongoing contractual obligation to build or manage the software, and the absence of such a contract means the asset is not regulated as a security.

Additionally, the second part of the test focuses on whether the asset meets the "expectation of profit" requirement from the Howey framework, which is used to identify securities. However, applying the Howey test to digital assets, especially those issued in initial coin offerings or on decentralized platforms, can be challenging. Even if people buy tokens expecting a profit, decentralized platforms often lack a central entity managing the project, making it hard to apply traditional securities criteria. As a result, many digital assets may not be classified as securities even when they are bought with profit expectations. Differentiating between utility tokens and investment tokens might require close consideration of the facts surrounding each case. Utility tokens are used for consumption within a specific platform or service, while investment tokens are designed to generate

returns. However, some digital assets serve both purposes, making their classification more complex.

However, the DARE Act 2024 generally governs virtual assets and their issuance, sale, and trade, providing exemptions for certain types of digital assets that do not fall under traditional securities laws. Virtual assets intended for utility purposes, such as those used solely within a particular platform or service, are typically not classified as securities. Section 2 of the DARE Act defines "digital assets" and sets out the criteria for distinguishing between utility tokens and securities. Meanwhile, Section 198(1) of the Securities Industry Act specifically states that certain virtual assets or classes of instruments, such as those within prescribed exemptions, may not be treated as securities.

Are stablecoins and NFTs regulated in Bahamas?

Stablecoins and NFTs are regulated in The Bahamas under the DARE Act, 2024, but their treatment depends on their nature.

Stablecoins, designed to maintain a stable value by being pegged to reserve assets like fiat currency or commodities, face strict regulation. Issuers must maintain adequate reserves, undergo regular audits, and report to the Securities Commission of The Bahamas to ensure transparency and financial stability. The SCB can also intervene, such as halting or delisting non-compliant stablecoins.

NFTs, which represent unique digital items like art or collectibles, are regulated based on their functionality. NFTs generally aren't considered securities unless they offer investment-like features, such as profit-sharing or ownership rights. Utility-based NFTs, which merely grant access or ownership, face lighter regulation unless they cross into the realm of financial products.

Stablecoins are closely regulated to protect the financial system, while NFTs are regulated based on their use and potential investment attributes.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Bahamas?

Yes, decentralized finance activities, such as lending virtual assets, are regulated in The Bahamas under the Digital Assets and Registered Exchanges Act, 2024. While the Act does not explicitly mention DeFi, it regulates digital asset activities broadly, encompassing those typically associated with DeFi platforms. According to Section 6, digital asset businesses include services like exchanging, managing, and transferring digital assets, which applies to DeFi platforms offering lending or borrowing services. These platforms must register with the Securities Commission of The Bahamas and comply with financial reporting requirements set out in Section 15, ensuring their solvency and transparency. Additionally, under Section 33, DeFi platforms must follow anti-money laundering and counter-financing of terrorism regulations, implementing systems to monitor and report suspicious activities. The SCB holds the authority under Section 5 to oversee these platforms, ensuring compliance, issuing fines, and safeguarding users from fraud or market manipulation. In

essence, DeFi activities such as virtual asset lending are regulated by the Act to ensure a secure, transparent, and legally compliant digital asset ecosystem in The Bahamas.

Are there any restrictions on issuing or publicly offering virtual assets in Bahamas?

In The Bahamas, the issuance and public offering of virtual assets are subject to strict regulatory oversight under the DARE Act, 2024, which establishes a clear framework to ensure transparency, investor protection, and market integrity. Any entity or individual seeking to issue or publicly offer virtual assets must first navigate a detailed registration process, as mandated by Section 9 of the Act. This section requires digital asset issuers to submit an application to the Securities Commission of the Bahamas providing essential details about their operations, financial standing, and key management figures. Without this registration, it is prohibited to issue or offer virtual assets within or from The Bahamas.

Public offerings of virtual assets are further regulated under Part IV of the Act, which covers token offerings. Issuers must prepare and submit an offering memorandum, similar to what is required in traditional securities offerings. This document must include detailed disclosures about the nature of the offering, risks involved, and the rights associated with the digital assets. Only after the SCB reviews and approves the offering can it be marketed or sold to the public. This process ensures that investors have access to critical information before participating in any virtual asset offerings.

The Bahamas DARE Act places specific regulatory requirements on certain types of digital assets, such as stablecoins. Under Section 49, stablecoin issuers must ensure adequate reserve backing and undergo regular audits to maintain their peg to an underlying asset. The SCB reserves the right to halt or delist any stablecoin if these requirements are not met.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in Bahamas?

In The Bahamas, while the issuance and public offering of virtual assets are tightly regulated under the Bahamas DARE Act 2024, the Act does provide certain exemptions to these restrictions. These exemptions are outlined to ensure that not all digital asset activities fall under the same level of regulatory scrutiny, particularly for assets that may not pose significant risks to investors or the financial system.

According to Section 3(2) of the Act, the following activities are exempt from the restrictions on issuing or publicly offering virtual assets:

1. *Security Tokens*: If a digital asset qualifies as a "security" under the Securities Industry Act, it is regulated under that Act rather than the Digital Assets and Registered Exchanges Act. This applies when the asset has characteristics of traditional securities, such as equity or debt instruments.
2. *Affinity or Rewards Programs*: The issuance of digital assets as part of loyalty or rewards programs, where the value cannot be exchanged for fiat currency, bank credit, or other digital assets, is exempt from the regulations. These types of tokens are purely for use within specific ecosystems and do not function as investments or currency.

3. *Non-Fungible Tokens (**NFTs**)*: NFTs, which are used purely for access or ownership of digital items (like art, collectibles, or game items), are exempt provided they are not used for payment or investment purposes. If the NFT is not a digital representation of another financial asset, it typically does not fall under the same regulatory requirements.
4. *Online Game Tokens*: Digital assets issued by or on behalf of a publisher for use within an online game or game platform are also exempt. These tokens must be used strictly within the game environment and should not be transferable or used for investment purposes.
5. *Electronic Representations of Fiat Currency or Other Financial Assets*: Digital representations of fiat currency, such as digital dollars issued by a central bank, or other financial assets that are not intended for payment or investment purposes are exempt from the 2024 Act.

These exemptions ensure that certain low-risk or utility-based digital assets, which are not designed to function as investments or securities, are not subject to the full regulatory burden of the 2024 Act. However, if a digital asset falls outside of these specific categories, it would need to comply with the full regulatory requirements, including registration with the Securities Commission of The Bahamas and the issuance of offering memoranda for public offerings.

3. Regulation of DASPs in Bahamas

Are DASPs operating in Bahamas subject to regulation?

Yes, Digital Asset Service Providers operating in The Bahamas are subject to regulation under the Bahamas Digital Assets and Registered Exchanges Act, 2024. This comprehensive legal framework ensures that DASPs comply with strict regulatory requirements to maintain transparency, consumer protection, and financial integrity in the digital asset space.

Any entity or individual offering services related to digital assets, such as exchanges, custody services, payment processing, or advisory services, falls under the definition of a DASP and must be registered and licensed by the Securities Commission of The Bahamas. Section 9 of the Bahamas DARE Act requires DASPs to submit detailed applications for registration, providing information about their operations, management, financial resources, and compliance structures.

Are DASPs providing virtual asset services from offshore to persons in Bahamas subject to regulation in Bahamas?

Yes, Digital Asset Service Providers providing virtual asset services from offshore to persons in The Bahamas are subject to regulation under the Bahamas DARE Act, 2024. The Act is designed to regulate not only DASPs operating within The Bahamas but also those offering services to Bahamian residents, even if the service provider is based offshore.

Section 3(1)(b) of the Bahamas DARE Act specifically states that it applies to any person or entity conducting digital asset business from outside The Bahamas, provided the services are being offered to persons residing in The Bahamas. This includes virtual asset exchanges, custody services, advisory services, and other types of digital asset-related activities. The Act is designed to ensure that Bahamian residents are protected from potential risks associated with digital asset services, regardless of where the service provider is physically located.

What are the main requirements for obtaining licensing / registration as a DASP in Bahamas?

To obtain licensing or registration as a Digital Asset Service Provider in The Bahamas under the Digital Assets and Registered Exchanges Act, 2024, applicants must meet a comprehensive set of requirements, overseen by the Securities Commission of The Bahamas. These regulations are designed to ensure transparency, consumer protection, and financial stability in the digital asset sector.

Key Requirements for Licensing/Registration:

According to Section 9, any entity seeking to provide digital asset services must first be registered as a legal entity, such as a company or firm, and submit a complete application to the SCB. This application includes detailed information about the entity's founders, directors, senior officers, beneficial owners, and relevant persons in the business. The forms required for this process include Form 1 (company registration), Form 2 (information about the founders and key persons), and Form 3 (appointment of the chief executive officer, compliance officer, and money laundering reporting officer). The registration ensures that the SCB has a full view of the operational and management structure of the DASP.

In terms of governance, Sections 10 and 11 require the appointment of a Chief Executive Officer who is suitably qualified and experienced. The CEO must demonstrate a thorough understanding of the digital asset business, its operational risks, and governance structure. If the digital asset services are being added as an additional activity to an existing business (e.g., financial institutions), Section 11 specifies that a separate application must be filed for this additional service.

Under Section 12, the SCB conducts a "fit and proper" assessment of the applicant and its key personnel. This assessment evaluates factors such as financial solvency, the educational qualifications and experience of those involved, and the applicant's ability to run the business competently, honestly, and fairly. If the SCB deems the applicant or any of its key figures unfit, the registration will be denied.

Financial solvency and reporting are key components of the registration process. Section 15 outlines that DASPs must have sufficient financial resources to support their operations and meet their obligations. The SCB may determine specific capital or liquidity requirements based on the DASP's risk profile, size, and the nature of its services. DASPs must submit audited financial statements on an annual basis and maintain adequate liquid capital to cover operational risks.

The technological infrastructure of the DASP is also scrutinized under Section 12(e). The applicant must demonstrate that it has appropriate systems and controls to manage risks effectively, particularly in relation to market surveillance, cybersecurity, and fraud detection. This includes implementing robust cybersecurity measures and ensuring that client data and digital assets are properly secured. Adequate systems to prevent market abuse, detect suspicious transactions, and manage cyber risks are essential for approval.

One of the most critical areas of regulation for DASPs is Anti-Money Laundering and Counter-Financing of Terrorism compliance, governed by Section 33. Every DASP must have systems in place to monitor and report suspicious transactions, ensuring that their operations are not used for illicit activities. This includes the appointment of a Compliance Officer and a Money Laundering Reporting Officer, responsible for ensuring that the DASP complies with AML/CFT laws.

The registration process is not a one-time requirement. Under Section 13, DASPs must renew their registration annually by submitting updated financial documentation, paying the required registration fee, and completing Form 6. If a DASP fails to meet the requirements for renewal, including submitting required financial reports, the SCB may revoke its registration.

For those DASPs offering custody services, Section 18 stipulates that they must segregate customer assets from their own and maintain proper controls to ensure the safekeeping of client assets. This is essential for ensuring that customer funds are protected in the event of insolvency or business failure. The DASP must also have systems in place to promptly return assets to customers upon request.

Additionally, Section 17 requires prior approval from the SCB for certain changes in the business, such as mergers, acquisitions, or significant alterations to the scope of activities. The DASP must apply for approval at least 28 days in advance of any planned changes, ensuring that the SCB can assess the potential impact on the market and clients.

Requirement	Details
Legal Entity Registration	Must be a registered legal entity; submit application with forms (Form 1, 2, 3) to SCB.
Governance and Management	Appointment of qualified CEO and other key personnel; separate application required for additional activities.
Fit and Proper Assessment	Evaluation of financial solvency, qualifications, experience, and integrity of key individuals (Section 12).
Financial Resources and Capital Requirements	Adequate financial resources; submission of audited financial statements; liquidity and solvency (Section 15).
Technology and Security Infrastructure	Implementation of market surveillance tools, cybersecurity measures, and systems to protect client data (Section 12(e)).
AML/CFT Compliance	Must appoint Compliance Officer and MLRO; establish systems for monitoring and reporting suspicious activities (Section 33).
Annual Registration Renewal	Annual submission of financial documents and renewal fees; failure to comply may result in revocation (Section 13).
Customer Asset Protection	Segregation of customer assets from company assets; ensure safe return of customer assets (Section 18).
Approval for Business Changes	Prior approval required for mergers, acquisitions, or major business changes; apply 28 days in advance (Section 17).

What are the main ongoing requirements for DASPs regulated in Bahamas?

Under the Digital Assets and Registered Exchanges Act, 2024, Digital Asset Service Providers in The Bahamas must adhere to several ongoing requirements designed to ensure compliance, transparency, and consumer protection. These obligations are crucial for maintaining the integrity of the digital asset industry and fostering trust between businesses and their customers.

One of the key requirements is the annual renewal of registration, which must be completed by January 31st each year. DASPs are required to submit Form 6, which includes an updated declaration and supporting documents such as a copy of their professional indemnity insurance policy. The renewal process also involves paying the appropriate fee, $15,000 for digital token exchanges and $10,000 for other digital asset businesses. Failure to renew on time can result in suspension or revocation of their registration.

Financial reporting is another critical requirement. DASPs must submit audited financial statements annually, demonstrating their financial health and solvency. These reports must show that the business maintains sufficient capital reserves to cover its operational risks, ensuring it can continue to meet its obligations. This is a key part of ensuring financial stability within the digital asset market.

Compliance with Anti-Money Laundering and Counter-Financing of Terrorism regulations is mandatory for all DASPs. This includes appointing a Compliance Officer and Money Laundering Reporting Officer who oversee adherence to these laws. They are responsible for monitoring transactions, conducting due diligence, and reporting suspicious activities to authorities. These measures are critical for preventing illegal activities within the digital asset space.

DASPs must also maintain strong cybersecurity measures to protect digital assets and customer information. Regular security audits and updates are essential to prevent data breaches, and any incidents must be reported to the Securities Commission of The Bahamas immediately. This ensures the safety and security of client assets and data.

For DASPs providing custody services, client assets must be kept separate from the company's operational funds. This segregation protects customer funds in the event of insolvency or operational failure. The DASP must also have systems in place to promptly return client assets upon request, ensuring they are safeguarded at all times.

DASPs must maintain accurate records of all transactions, filings, and communications, making these available to the SCB when requested. In addition, any significant changes to the business, such as changes in ownership or key personnel, must be reported using Form 7, with prior approval required for major operational shifts.

If a DASP has conducted an Initial Token Offering, they are required to keep the Offering Memorandum up-to-date, reflecting any changes in the project or risk profile. Additionally, businesses must maintain adequate regulatory capital to meet their operational risks, ensuring they can continue to function effectively and meet client demands.

The SCB may conduct regular audits and inspections to ensure ongoing compliance. Non-compliance during these audits can result in penalties, including fines or suspension of operations.

Requirement	Provision	Amount (USD)
Annual Registration Renewal (Digital Token Exchanges)	Form 6, Section 13	$15000
Annual Registration Renewal (Other Digital Asset Businesses)	Form 6, Section 13	$10000
Annual Renewal of Key Personnel (CEO, Compliance Officer)	Section 13	$500
Audited Financial Statements	Section 15	Depends on Auditor
Initial Token Offering (ITO) - Updating Offering Memorandum	Section 15	$6000
Director Appointments/Changes	Section 17	$400
Approval of Digital Asset-Related Actions	Section 17	$400
Extension for Filing Financial Statements (3 months)	Section 15	$150
Extension for Audited Statements	Section 15	$700
Surrender of Registration Certificate	Section 13	$300

What are the main restrictions on DASPs in Bahamas?

Digital Asset Service Providers in The Bahamas, under the Digital Assets and Registered Exchanges Act, 2024, are subject to a range of restrictions designed to ensure a secure and transparent environment for digital assets. These restrictions aim to protect investors and uphold the integrity of the digital asset ecosystem.

First, all DASPs must be registered and authorized by the Securities Commission of The Bahamas before offering any digital asset services. Operating without proper registration, as stipulated in Section 9, is prohibited. Additionally, DASPs cannot expand their service offerings beyond what is approved during registration without receiving explicit approval from the SCB. Any unauthorized activity can result in fines or suspension of operations.

When it comes to issuing tokens, DASPs are restricted by the requirement to submit an offering memorandum to the SCB for approval, as outlined in Part IV of the Act. This ensures that any public token sales or offerings are conducted with full disclosure of risks and structural details. For stablecoins, the issuance is further restricted under Section 49, which mandates adequate reserve backing and regular audits. Issuing stablecoins without meeting these requirements is not allowed.

DASPs must also comply with strict Anti-Money Laundering and Counter-Financing of Terrorism rules, as set out in Section 33. They are required to monitor transactions, conduct due diligence, and report any suspicious activity. Engaging in activities that facilitate money laundering or terrorism financing is strictly prohibited, with severe penalties for non-compliance.

Insider trading and market manipulation are both strictly forbidden under Sections 68 and 71. DASPs, as well as their employees, must not use non-public information to trade digital assets for personal gain or to give an unfair advantage to others. Additionally, any activity that distorts market prices or creates misleading conditions is considered market manipulation, which carries significant penalties, including fines and potential criminal charges.

A key protection for customers is the segregation of assets. Under Section 18, DASPs that provide custody services must keep customer assets separate from their own operational funds. This ensures that client assets are protected in the event of insolvency or business failure. Mixing customer and company funds is prohibited to safeguard client interests.

Further restrictions apply to marketing practices, as outlined in Section 60. DASPs are prohibited from engaging in false or misleading advertising. All public communications must be transparent and accurate, ensuring that customers are fully informed about the services and the risks involved.

In addition, any significant business changes, such as changes in ownership, management, or the scope of services, require prior approval from the SCB under Section 17. Without this approval, DASPs are not allowed to make major alterations to their business operations.

Lastly, while DASPs may offer services to international clients, they must adhere to the regulatory requirements of the countries where those clients are based. Offering services in jurisdictions with sanctions or insufficient regulatory frameworks is restricted to protect the DASP and the broader financial system.

What are the main information that DASPs have to make available to its customers?

Virtual Asset Service Providers, encompassing entities like cryptocurrency exchanges, wallet providers, and other crypto service providers, are obligated to furnish specific information to their clientele to ensure adherence to regulations, transparency, and customer safeguarding. Although the particulars may differ across jurisdictions, there are common categories of information that DASPs are typically mandated to offer to their customers:

1. DASPs must clearly disclose their business and regulatory information which includes their registration status with the Securities Commission of The Bahamas, along with accessible contact details for customer support.
2. detailed explanation of their service offerings and provide a schedule of fees to enable customers need to understand the specific services available, such as trading, custody, or staking, and be fully informed of any fees they will incur. Hidden fees or unexpected charges are prohibited, ensuring that all costs are clearly outlined upfront.
3. disclosure of risk information and the general risks associated with digital assets, such as price volatility and technological vulnerabilities. They must also provide specific risk disclosures for each service offered, so customers are aware of the potential risks tied to each activity, such as trading or custody services.
4. legal or regulatory risks that could affect the business or customers' assets, such as changes in legislation or regulatory actions that may impact operations.
5. terms of service delineating the guidelines for utilizing their platform or services such as account registration procedures, trading protocols, fee structures, transaction limits, security protocols, and mechanisms for resolving disputes.
6. the rights and responsibilities of both the customer and the service provider, as well as any limitations or restrictions on the services provided.

7. DASPs are required to furnish privacy policy elucidating the collection, storage, utilization, and protection of customer data. Customers should be informed about the nature of personal information gathered, its intended purposes, and the measures implemented to safeguard their data.
8. DASPs are required to make transaction records available to customers in a timely and accessible manner. Customers should be able to view their transaction history, including deposits, withdrawals, trades, and fees charged.
9. DASPs must provide customers with an audit trail or transaction confirmations that verify the integrity of the digital asset transactions, for services like custody or trading;
10. Information on how customer assets are protected must be disclosed including explanations on how customer assets are segregated from the company's operational funds, ensuring that assets are safe even if the business faces financial difficulties;
11. If any insurance or protection mechanisms are in place to safeguard customer assets, this information must also be communicated;
12. DASPs must outline the process for handling disputes and complaints. Customers should be informed of how to file a complaint and how any disputes will be resolved. The steps of the resolution process and expected response times should be made clear.
13. In the event of changes to services or terms, DASPs are required to provide customers with advance notice;
14. DASPs must also explain the withdrawal and transfer processes for digital assets. Customers need clear instructions on how to withdraw assets from the platform, including any applicable fees or timeframes;
15. the procedures for transferring assets to and from the platform must be disclosed to customers.
16. DASPs must disclose their regulatory and compliance obligations, particularly regarding Anti-Money Laundering and Counter-Financing of Terrorism requirements.

Section	Disclosure Type	Disclosure Required	Event/Trigger	Purpose
Section 9	Business Registration & Contact Info	Business registration status and contact information	Upon onboarding customers	To verify that the DASP is properly authorized and regulated
Section 15	Transaction Information	Transaction records, financial history, and audit trails	At any time; accessible for customer reference	To maintain transparency and enable customers to track activity
Section 17	Changes to Services	Notice of significant changes to services, terms, or fees	Before making significant changes to services	To keep customers informed about modifications that affect them
Section 18	Asset Protection & Custody	Asset segregation practices and protection measures	For customers using custody services	To assure customers their assets are segregated and protected
Section 33	AML/CFT Compliance	Explanation of AML/CFT policies and customer due diligence	During onboarding and ongoing transaction monitoring	To ensure compliance with anti-money laundering regulations
Section 60	Service Offerings & Fees	Detailed description of services and schedule of fees	Before service usage; at the point of charging fees	To ensure transparency regarding services offered and costs
Section 60	Terms and Conditions & Privacy Policy	User agreements, terms of service, and privacy policy	Before customers agree to use services	To clarify user rights, responsibilities, and data handling
Section 61	Withdrawal & Transfer Procedures	Instructions on withdrawing or transferring digital assets	Upon customer request for withdrawals or transfers	To clarify the process and conditions for asset withdrawals
Section 64	Dispute Resolution Process	Clear process for handling complaints and disputes	When a customer files a complaint	To provide a structured mechanism for resolving issues
Section 66	Risk Disclosures	General and specific risks of digital assets	Before customer engagement in digital asset services	To inform customers of potential risks, including volatility

What market misconduct legislation/regulations apply to virtual assets?

In The Bahamas, market misconduct regulations and legislation that apply to virtual assets are primarily governed by the Digital Assets and Registered Exchanges Act, 2024, along with other key legislative frameworks like the Securities Industry Act, Proceeds of Crime Act, and Financial Transactions Reporting Act. These regulations are designed to prevent fraud, market manipulation, insider trading, and other forms of misconduct within the digital asset space. A brief overview of the various market misconduct provisions in the Bahamas legislation that may apply to virtual assets is set out below:

1. *The Securities Industry Act, 2024*:

    1.1 *Misleading Information (Section 123)*: This section prohibits making any false or misleading statements that could affect market prices or transactions. While primarily focused on securities, if a virtual asset is classified as a security under the SIA, this section would apply.

    1.2 *Disclosure of Material Changes (Section 115)*: Companies must disclose material information in a timely and accurate manner. This can include information about virtual asset offerings or financial statements of companies involved in digital asset issuance or trading.

1.3 *Designation Orders (Section 198)*: In public interest the Commission may, without providing an opportunity to be heard or make representations, order to the effect that digital assets are security or not.

2. *The Proceeds of Crime Act, 2018*:

2.1 *Money Laundering (Section 43)*: Engaging in or facilitating money laundering using virtual assets is strictly prohibited. This includes transferring, concealing, or using virtual assets obtained through criminal activities. Any involvement in laundering proceeds derived from illegal activities is punishable under this Act.

2.2 *Freezing Orders and Forfeiture (Section 54)*: Authorities can issue freezing orders for virtual assets suspected to be linked to criminal activities, and virtual assets can be forfeited if proven to be derived from crime.

3. *Financial Transactions Reporting Act (FTRA), 2018*:

3.1 *Know Your Customer (KYC) Requirements (Section 10)*: DASPs must verify the identity of their customers and implement KYC procedures to prevent the facilitation of illegal activities, such as money laundering, through virtual assets.

3.2 *Suspicious Transaction Reporting (Section 17)*: DASPs are required to monitor and report any suspicious transactions involving virtual assets that could indicate money laundering, terrorism financing, or other illicit activities.

4. *Financial and Corporate Service Providers Act, 2020*:

4.1 *Fit and Proper Requirements (Section 4)*: Companies and individuals involved in virtual asset services must meet "fit and proper" standards, including having the necessary expertise, qualifications, and good standing to operate within The Bahamas. Non-compliance with these standards can lead to penalties or the revocation of licenses.

5. *Anti-Terrorism Act, 2018*:

5.1 *Financing of Terrorism (Section 5)*: DASPs are prohibited from knowingly assisting in or facilitating the financing of terrorism using virtual assets. They are required to report any suspicious transactions that could be related to terrorism financing.

6. *Companies Act, 1992*:

6.1 *Good Standing (Section 277)*: Virtual asset businesses must demonstrate that they are in good standing under The Companies Act, meeting all their legal and regulatory obligations. This includes compliance with filing requirements and maintaining accurate financial records.

4. Regulation of other crypto-related activities in Bahamas

Are managers of crypto funds regulated in Bahamas?

Managers of crypto funds in The Bahamas are regulated depending on the nature of their activities and the structure of the fund. If the fund primarily invests in cryptocurrencies or

digital assets, the regulatory framework is determined by the Investment Funds Act, 2019, and the Digital Assets and Registered Exchanges Act, 2024. However, the applicability of these regulations depends on the specific facts and circumstances of the fund's operations, and it is crucial to seek proper legal advice for compliance. However, it's crucial to recognize that regulatory frameworks for digital assets and associated activities, like fund distribution, may differ based on jurisdiction and the types of digital assets involved. Fund managers must register as Digital Asset Service Providers with the Securities Commission of The Bahamas, as mandated by Section 9, ensuring their activities comply with the law. The Act also imposes market conduct rules under Sections 68 and 71, prohibiting insider trading and market manipulation. Fund managers cannot use non-public information for trading or engage in practices that artificially influence asset prices. Section 60 requires fund managers to provide clear disclosures about the risks associated with digital assets, such as price volatility, while avoiding false or misleading information. Section 33 of the DARE Act, 2024 mandates crypto fund managers to adhere to AML/CFT regulations, implementing anti-money laundering measures and ensuring proper identity verification and reporting of suspicious transactions. Given the complexity of these requirements, legal advice is essential to ensure full compliance.

Are distributors of virtual asset funds regulated in Bahamas?

Distributors of virtual asset funds in The Bahamas are regulated under various laws, depending on their role and the specific activities they perform. The primary regulatory framework comes from the Digital Assets and Registered Exchanges Act, 2024 and the Securities Industry Act, 2011, as well as other applicable legislation related to financial services.

The Digital Assets and Registered Exchanges Act, 2024 regulates entities involved in the distribution of virtual assets, including virtual asset funds. Distributors who engage in activities such as offering, selling, or marketing virtual asset funds to investors must comply with the Act's requirements.

1. *Registration as a Digital Asset Service Provider (Section 9)*: Distributors of virtual asset funds must register as Digital Asset Service Providers with the Securities Commission of The Bahamas
2. *Market Conduct (Sections 68 & 71)*: Distributors are required to adhere to strict rules regarding insider trading and market manipulation. They must not engage in practices that artificially inflate the value of the virtual assets they distribute, nor can they use non-public information for personal gain.
3. *Disclosure Requirements (Section 60)*: Distributors must provide transparent and accurate information to investors regarding the nature, risks, and potential returns of the virtual asset funds they distribute. Misleading or deceptive advertising is prohibited.

AML/CFT Compliance (Section 33): Distributors must comply with anti-money laundering and counter-financing of terrorism regulations. This involves verifying the identity of

investors, monitoring transactions for suspicious activity, and reporting any suspicious activities to the authorities.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Bahamas?

Intermediaries seeking to provide trading services or advice on virtual assets in The Bahamas must comply with the Digital Assets and Registered Exchanges Act, 2024. They are required to register as Digital Asset Service Providers with the Securities Commission of The Bahamas, ensuring they meet "fit and proper" standards and adhere to compliance obligations. This includes implementing Anti-Money Laundering and Counter-Financing of Terrorism measures, such as verifying client identities and monitoring transactions for suspicious activity. Additionally, intermediaries must provide transparent information on the risks of virtual assets, avoid market manipulation or insider trading, and ensure client assets are protected by segregating them from operational funds.

Intermediaries that offer advisory services must also act in their clients' best interests, providing accurate, suitable advice based on the client's financial situation and risk tolerance. If the virtual assets being traded qualify as securities, intermediaries must comply with the Securities Industry Act, 2011 & 2024 and may need additional licensing as securities dealers. In all cases, intermediaries must follow strict disclosure, reporting, and market conduct rules to ensure investor protection and market integrity, making legal advice essential to navigate these regulations effectively.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in Bahamas?

No.

Has there been any notable events in Bahamas that has prompted regulatory change recently?

In the backdrop of collapse of FTX exchange, Bahamas have made several steps to make the regulation globally compliant and to ensure customer protection and gobal recognition in crypto sphere.

6. Pending litigation and judgments related to virtual assets in Bahamas (if any)

There are no notable judgments in the jurisdiction however the case of FTX v SEC decided in the US courts which dealt with the FTX exchange registered in the jurisdiction. The SBC took

extensive steps to safeguard the assets of the consumers by transferring digital assets from FTX to a safe wallet under the control and protection of the Government.

7. Government outlook on virtual assets and crypto-related activities in Bahamas

The government's vision for the digital asset sector in The Bahamas is to establish the country as a prominent hub for virtual assets in the Caribbean and a global leader in progressive regulation within this domain.

The Bahamas takes a forward-thinking yet cautious approach to regulating digital asset businesses. Recognizing the potential of digital assets like cryptocurrencies to drive financial innovation and economic growth, the Securities Commission of The Bahamas introduced a clear regulatory framework that allows businesses to operate while safeguarding consumers and investors. This framework, centered around the Digital Assets and Registered Exchanges Act, ensures that digital asset businesses are properly registered and follow strict guidelines on issues like anti-money laundering and protecting customer assets. The goal is to create a supportive environment for innovation, without compromising on the integrity of the market or the safety of the public.

At the heart of this approach is the belief that innovation and regulation can go hand in hand. The SCB sees itself as a partner to businesses, providing clear rules that help companies thrive while making sure they act responsibly. The focus is not just on allowing new technologies like blockchain and cryptocurrencies to flourish, but also on ensuring that risks such as fraud and financial crime are minimized. By maintaining a flexible, tech-neutral stance, The Bahamas is positioning itself as a global leader in digital finance, with a focus on creating a fair, transparent, and secure market for all participants.

Effective collaboration among regulatory entities, notably the Securities SCB of The Bahamas and the Central Bank of The Bahamas, is crucial for ensuring the continued sound regulation of the digital asset sector. Acknowledging the economic potential inherent in digital assets and distributed ledger technologies, the government recognizes the role of these innovations in generating new business opportunities and driving economic growth, particularly for small island economies like The Bahamas.

8. Advantages of setting up a DASP in Bahamas

Bahamas is one of the prominent offshore jurisdictions given its tax neutrality, confidentiality of data and information by the government, simple reporting systems, asset protections and limited liability protection.

The main advantages of setting up a DASP in the BVI are:

1. *tax benefits*

   The jurisdiction maintains a tax-neutral environment, characterized by the absence of direct taxation on personal or commercial revenue, capital gains, and inheritance. Key

features of taxation in the Bahamas include the lack of corporate income tax on both domestic and global corporations, as well as no personal income tax imposed on residents and non-residents. There are no capital gains tax, wealth tax, or inheritance tax in the Bahamas. However, the country does impose Value Added Tax (VAT) on the supply of goods and services, customs duties on imported goods, real property tax on land and buildings, and stamp duties on specific operations.

2. *International cooperation*

   The government recognizes the importance of cooperation with domestic and international supervisory authorities to address emerging trends, risks, and developments in the digital asset industry. Establishing national advisory panels and engaging with experts reflect a collaborative approach to staying informed and responsive to digital asset-related challenges

3. *asset protection*

   The government's regulatory approach emphasizes investor protection by implementing measures such as disclosure of information, product suitability requirements, and registration and supervision processes for digital asset businesses. These measures are designed to safeguard investors and stakeholders participating in the digital asset market.

4. *Education and training*

   The government, through the Securities SCB of The Bahamas, invests in staff training programs on cryptocurrency, blockchain technologies, and decentralized finance to enhance expertise in the digital asset sector. Additionally, collaboration with educational institutions and national advisory panels demonstrates a commitment to promoting understanding and knowledge in the digital asset space.

October 2024

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Bermuda

1. Digital asset laws and regulations in Bermuda

The digital asset landscape in Bermuda is governed by a comprehensive regulatory framework comprising key legislative instruments and regulatory guidelines. The Digital Asset Business Act 2018 (**DABA**) is the foundational legislation for overseeing digital asset businesses, while the Digital Asset Business (Prudential Standards) (Annual Return) Rules 2018 provide specific reporting requirements and financial standards. Additionally, the government has issued a Statement of Principles to outline overarching guidelines for the digital asset industry. Under the Investment Funds Act 2020, sector-specific guidance notes have been introduced to elucidate regulatory expectations and compliance standards for digital asset businesses. To facilitate the licensing process, the Assessment and Licensing Committee (ALC) Digital Asset Business Application Process was established in September 2018. Codes of practice for digital asset custody were also promulgated in May 2019, with updates made in April 2023. Bermuda's commitment to international cooperation in regulating digital assets is reflected in the International Cooperation Policy articulated by the regulatory body. Furthermore, the Digital Asset Issuance Act 2020, enacted on 23 June 2020, provides a framework for regulating digital asset issuance activities within the jurisdiction. These laws and guidelines collectively contribute to comprehending and regulating the digital asset space in Bermuda, promoting transparency, compliance, and innovation within the sector. Additionally, various rules, including the Digital Asset Issuance Rules 2020 (**DAIA**) and the Digital Asset Business (Custody of Client Assets) Rules 2024, along with statements of principles and codes of practice, establish standards and best practices for entities operating in the digital asset space. The Assessment and Licensing Committee oversees the application process for digital asset businesses, ensuring compliance with prudential standards, client disclosure requirements, and cybersecurity measures outlined in respective rules. Furthermore, regulations such as the Proceeds of Crime (AML/ATF Financing) Regulations 2008 and international sanctions regulations play a crucial role in

combating money laundering and ensuring global regulatory alignment. With policies for international cooperation in place, Bermuda's regulatory framework aims to foster innovation while maintaining integrity and compliance with global standards and regulations.

What is considered a digital asset in Bermuda?

The definition of digital assets is broad and encompasses various form of digital representation. Digital Assets mean anything which has value that exists in binary format and comes with the right to use it but excludes legal tender such as Central Bank Digital Currencies (**CBDCs**) regardless of whether they are denominated in legal tender.

They are intended to represent ownership in assets such as debt or equity in the entity promoting them and represent any other assets or rights associated with those assets.

It also includes digital assets designed to provide access to applications, services, or products through distributed ledger technology.

Who do such laws and regulations apply to?

All those business entities engaged in Digital asset business (**DAB**), Digital asset services vendor (**DASV**) and digital asset issuance platform (**DAIP**) are under the ambit Bermuda digital asset laws and regulations, these include:

DAB and its associated activities include the following:

1. Issuing, selling or redeeming digital coins, tokens or any other form of digital asset;
2. operating as a payment service provider business utilizing digital assets, which include the provision of services for the transfer of funds;
3. operating as a digital asset exchange;
4. carrying on digital asset trust services;
5. providing custodial wallet services;
6. operating as a digital asset derivative exchange provider;
7. operating as a digital asset services vendor

A DASV encompasses various activities related to digital assets, including:

1. Facilitating digital asset transactions on behalf of others under a formal agreement as part of its business operations;
2. holding power of attorney over digital assets belonging to another individual or entity, thereby possessing authority to manage or act on behalf of those assets;
3. operating as a market maker for digital assets, facilitating liquidity by buying and selling assets to maintain market stability;
4. serving as a digital asset benchmark administrator, responsible for establishing and maintaining benchmarks or reference points used to assess the performance or value of digital asset.

A DAIP in relation to a digital asset issuance, includes a website or an electronic database or other software platform for the purpose of selling digital assets or providing information to the public with regards to a digital asset issuance or on boarding, processing or otherwise soliciting digital asset acquirers.

Who are the relevant regulatory authorities in relation to digital assets in Bermuda?

The Bermuda Monetary authority (**BMA**) oversees the supervision and regulation of entities involved in DAB activities and Digital Asset Issuance activities.

What are the penalties for breaches of digital asset laws and regulations in Bermuda?

The BMA regulates financial institutions in Bermuda and has the authority to impose penalties and other sanctions. Entities operating in the digital asset space are subject to stringent regulations overseen by the BMA, with penalties in place for non-compliance. These regulations cover various aspects, including licensing requirements, client asset protection, and anti-money laundering measures. Businesses operating in digital asset activities without the required license in Bermuda face penalties of up to US$250,000 in fines and/or up to five years imprisonment. Non-compliance penalties under the DABA can reach a maximum of $10,000,000 depending upon the severity of the offense determining the penalty extent. The BMA may direct licensed businesses to take actions for client protection if they breach any provisions of the Act, with non-compliance punishable by fines of up to US$2 million. Furthermore, the BMA conducts investigations into licensed businesses to ensure compliance with the DABA and assesses ownership and control within these entities. Entities can appeal against penalties or request waivers by submitting appeals to the BMA.

2. Regulation of digital assets and offerings of digital assets in Bermuda

Are digital assets classified as 'investments' or other regulated financial instruments in Bermuda?

Any digital asset which is intended to represent assets such as debt or equity in the promoter or is otherwise intended to represent any assets or rights associated with such assets are incorporated in the definition of digital asset.

However, the regulatory framework for digital assets is characterized by a principle of proportionality in evaluating different types of digital assets within the digital asset issuance or business activities. Notably, there are no specific laws, regulations, or restrictions governing the participation of individuals or entities resident or situated in Bermuda in the purchase, holding, or sale of digital assets, unless these assets represent a security in a Bermuda company. In such cases, the Exchange Control Act (**ECA**) and related regulations may apply to regulate these transactions.

If a DAB is issuing securities, they need prior approval from BMA and put additional policies in place to get the approval of BMA as per the requirements for a business issuing securities by the BMA.

Are stablecoins and NFTs regulated in Bermuda?

Stabecoins generally refer to those digital assets which are tethered 1:1 to international currency like US dollar or some other asset which makes stable compared to other digital assets like utility tokens. In Bermuda, stablecoins are regulated and are covered under the definition of digital assets. In May 2024, the BMA issued a Guidance note to provide clarity for the digital assets industry on the standards the Authority expects when considering whether persons Licensed under the DABA and carrying on business as Single Currency Pegged Stablecoins Issuers (**SCPSIs**) are conducting their business in prudent manner.

NFTs exist in binary format and comes with the right to use it and includes a digital representation of value and therefore possesses the characteristics of digital assets as defined under DABA. NFTs are regulated in the Bermuda.

Are decentralised finance (DeFi) activities (e.g. lending digital assets) regulated in Bermuda?

Decentralized finance (**DeFi**) applications themselves are not DABs, but individuals or entities involved in creating, owning, operating, or maintaining control over DeFi arrangements may fall under the FATF definition of a digital asset service vendor if they provide or actively facilitate digital asset services. The provision of lending digital assets would be covered by the laws and regulation of Bermuda.

The determination of whether an activity falls under the regulations should be made on a case-by-case basis, emphasizing the practical implications and functions of the business activity.

Are there any restrictions on issuing or publicly offering digital assets in Bermuda?

In Bermuda, any offering of digital assets are regulated by DAIA, subject to section 11 of DAIA a person shall not conduct a digital asset issuance in or from within the Bermuda unless it is an authorised undertaking. Every authorised undertaking conducting a digital asset issuance in Bermuda is required to appoint a local representative who meets specific criteria outlined by the regulatory authority. This representative must be appointed from the start of the offering until 120 days after its conclusion. The local representative must be approved by the BMA to act on behalf of the authorised undertaking and must maintain a physical office in Bermuda.

An undertaking cannot offer digital assets to the public through a digital asset issuance without meeting certain requirements, including:

1. Publishing an issuance document in electronic form before the offer.
2. Filing a copy of the issuance document with the BMA, signed by or on behalf of all directors, either before or shortly after its publication.

However, there are exceptions to the requirement of filing an issuance document with the BMA, such as if the digital assets are listed on an appointed stock exchange or an accredited digital asset exchange. Additionally, exemptions may apply if the offering is made solely to non-residents of Bermuda or if the documents have been accepted by relevant authorities or exchanges.

An undertaking conducting a digital asset issuance in or from within the Bermuda Offerings are broadly classified in two categories; public offering i.e. to the public at large and private offerings where maximum number of acquirers is 150 or institutional acquirers who have a reserve of $5,000,000 and above.

Entities seeking to publicly offer digital assets in the Bermuda are required to be authorised by the BMA under the DAIA.

Are there any exemptions to the restrictions on issuing or publicly offering of digital assets in Bermuda?

Yes, there are exemptions available for issuers seeking to issue or publicly offer digital assets in Bermuda. These exemptions are outlined in section 16(2) of the DAIA and include provisions for filing an exemption form with the BMA before proceeding with the digital asset issuance.

Specifically, exemptions apply in the following scenarios:

1. *Digital Asset Issuance through an Accredited Digital Asset Business*: If an issuer offers digital assets to the public through an accredited digital asset business, only certain rules (5 and 7 to 10) are applicable. However, if the issuer holds digital asset acquirers' assets under custody but not through the accredited digital business, additional rules (14 to 18) apply.
2. *Local Issuers*: Local issuers who qualify as such are not required to appoint a local representative as mandated by section 27 of the DAIA. Furthermore, certain rules (11, 12, 13, 15, and 16) are not applicable to these issuers.

Additionally, the BMA has the authority to exempt or modify rules under the DAIA based on determinations made or applications received from authorised undertakings. However, any exemptions or modifications granted are subject to conditions imposed by the BMA, and the authority may revoke or vary them if deemed necessary, ensuring compliance with regulatory standards and considering the nature, scale, and complexity of the authorised undertaking.

3. Regulation of DABs in Bermuda

Are DABs operating in Bermuda subject to regulation?

Yes, the DABs must comply with the laws and regulation in Bermuda regulating their code of conduct and anti-money laundering (**AML**) anti-terrorism financing (**AFT**) regulations. DABs must also adhere to Bermuda's international cooperation agreements with international organisation ensuring best practices for businesses involved in digital assets.

Are DABs providing digital asset services from offshore to persons in Bermuda subject to regulation in Bermuda?

Any entity involved in digital asset services either within the jurisdiction or from outside the jurisdiction to the public of Bermuda are required to be licensed under the regulation of DABA or DAIA according to the services provided by them.

What are the main requirements for obtaining licensing / registration as a DABs in Bermuda?

In Bermuda, issuers planning to issue digital assets with the primary purpose of raising capital for a venture or project must obtain authorization from BMA under DAIA. Conversely, issuers intending to issue digital assets with characteristics of a business, such as continuous issuance with the aim of generating profit, are required to obtain a DAB license from the BMA. Entities engaged in digital asset business activities within or from Bermuda are required to acquire a license from the Bermuda Monetary Authority (BMA). The available licenses are categorized into three classes:

1. Class F (full license)
2. Class M (modified license under the 'sandbox regime')
3. Class T (test license)

According to the DABA, entities applying for Class M and Class F licenses must meet a minimum net asset requirement of $100,000. The associated application fee for Class M and Class F licenses is $2,266. For Class T licenses, the net asset requirement is also $100,000, with an application fee of $1000.

Bermuda digital asset legislations sets out detailed requirements for entities seeking license in Bermuda. Below are the general requirements for submitting a comprehensive Digital Asset Business application, the application must include the following documents:

1. A cover letter providing an executive summary of the application and explaining how the minimum licensing criteria specified in the Schedule to the DABA are satisfied. If required documentation is missing, a written explanation for the omission(s) is necessary;
2. copies of the Memorandum of Association, Certificate of Incorporation, or Registration Permit (if available);

3. business plan including various details such as ownership structure, board of directors and management information, business purpose for licensing in Bermuda, business strategy, risk assessment, description of business activities and products, financial projections, staffing requirements, risk management procedures, compliance measures, and other relevant information;
4. copy of Anti-Money Laundering and Anti-Terrorism Financing policies and procedures as required by Regulation 16 of The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
5. information about corporate shareholders and ultimate beneficial owners, including financial statements, regulatory filings, background information, personal declaration forms, bank references, and net worth statements;
6. description of the applicant's proposed cybersecurity programme, including policies and procedures related to private key storage;
7. description of arrangements to allow the BMA access to monitor digital asset transaction records with online or automated real-time read-only access, and provision of wallet public addresses;
8. unconditional acceptance letters from the approved auditor and senior representative;
9. curriculum vitae of the applicant's senior representative;
10. Address of the applicant's head office;
11. declaration from an officer of the applicant confirming awareness of and intention to abide by the Code of Practice required pursuant to the DABA.

For applicants seeking to continue an overseas operation from a foreign jurisdiction into Bermuda, the following additional requirements must be provided:

1. A Certificate of Good Standing from the relevant regulatory authority in the foreign jurisdiction;
2. contact information for the regulatory authority in the relevant foreign jurisdiction, including contact person name/title, organization name/address, email address, and telephone contact details;
3. copies of the most recent statutory financial statements and/or any other relevant financial information demonstrating compliance with the capital, solvency, and liquidity requirements of the foreign jurisdiction.

For Class M applications, which involve modified licensing requirements, the following additional information is required:

1. Inclusion of the roadmap to deploy services and delivery mechanisms on a broader scale once the modified class license has expired in the business plan;
2. details of any current or past participation of the applicant in a regulatory sandbox in another jurisdiction/country;
3. description of the proposed product, service, or distribution channel to be offered under the Class M license, including how the sandbox eligibility criteria outlined in the

Digital Asset Business Regulatory Sandbox Guidance Note are met, differentiation from existing market offerings, benefits, foreseen risks, and any licenses, patents, or copyrights related to the proposed product/service;

4. nature of testing during the proof-of-concept stage, including start and end dates of the Class M license, requested modifications to legal and regulatory requirements, test plan, controls and scenarios, involved clients and counterparties, critical success factors, monitoring plan for breaches, and a contingency plan for unsuccessful testing or premature exit from the sandbox, with client protections in place.

Applications must be received by the Bermuda Monetary Authority (BMA) no later than 5:00 p.m. on the relevant Thursday to be considered by the Application Licensing Committee (ALC) four weeks later. Applications should be emailed to innovate@bma.bm, with a hard copy submitted to the BMA's FinTech Department. All documents must be provided in English.

What are the main ongoing requirements for DABs regulated in Bermuda?

Digital asset businesses operating and licensed by the BMA subject to conditions in the license are required to file the following documents annually within four months after the end of its financial year:

Document	Requirement	Documents Required
Cybersecurity report	Section 3 of the Digital Asset Business (Cybersecurity) Rules 2018	Written report prepared by its chief information security officer assessing its electronic systems, any risk identified and any cyber security program implemented to redress any inadequacies identified.
Annual return	Section 3 of the Digital Asset Business (Prudential Standards) (Annual Return) Rules 2018	Annual returns accompanied with business plan for the next financial year
Audited financial statements	Section 31 of the DABA	Annual audited financial statements audited by an approved auditor of BMA.
Financial accounts	Section 31 of the Digital Asset Business Act 2018 and the Digital Asset Business Account Rules 2021	Annual audited financial accounts audited by an approved auditor of BMA.
Certificate of Compliance	Section 66 of the DABA	A certificate of compliance signed by two directors or one director an done officer of the undertaking certifying to their knowledge the undertaking has complied with the codes of practice

A licensed DAB shall file a declaration signed by two directors or a director and an officer that to the best of their knowledge and belief the information in the annual return is fair and accurate.

BMA advocates for proportionality principle and those DABs having inherently greater risks due to their complexity, size or mode of business would be required to perform such other obligations as required of them in pursuance to the instructions of BMA.

To ensure compliance with AML and ATF regulations, Regulated Financial Institutions (**RFIs**) must identify, assess, and mitigate ML/TF risks across their operations, conduct regular risk assessments, appoint a senior Compliance Officer and Reporting Officer, screen employees rigorously, provide comprehensive training, regularly audit and test AML/ATF policies and controls, and recognize potential personal liability for non-compliance.

RFIs must implement appropriate levels of customer due diligence (**CDD**) measures tailored to different customer types, applying proportionate risk-mitigation measures to prevent the misuse of products, services, customer information, and delivery channels for money laundering and terrorism financing. This includes determining the scope and frequency of ongoing monitoring of business relationships and transactions, conducting periodic reviews of customer files based on risk rating or score and customer type, and implementing measures for monitoring, detecting, and reporting suspicious activities to the relevant authorities, while also monitoring activities that may elevate a customer's risk profile.

In the event of a "cyber reporting event," defined as any unauthorized access, disruption, or misuse of electronic systems or stored information of a licensed undertaking, including breaches of security resulting in loss, destruction, disclosure, or unauthorized access, a senior representative must promptly notify the Authority. This notification should include a description of the event, the categories and approximate number of digital assets affected, timing and method of occurrence, likely consequences, any mitigating actions, impact on clients, and details of any communications. Within 14 days, the senior representative must submit a detailed report to the Authority, including root-cause and impact analyses, based on available information.

RFIs should be aware that under Section 16 of the Financial Intelligence Agency Act 2007, the Financial Intelligence Agency may, in the course of enquiring into a suspicious transaction or activity relating to money laundering or terrorist financing, serve a notice in writing on any person requiring the person to provide the Financial Intelligence Agency with such information as it may reasonably require for the purpose of its enquiry.

What are the main restrictions on DABs in Bermuda?

The Bermuda imposes certain restrictions on a person engaged in DABs or digital asset issuance in or from within the jurisdiction, these include:

1. DABs are prohibited from carrying out digital asset business activities in or from within Bermuda without obtaining the necessary license.
2. Any person intending to become a 10% shareholder controller or a majority shareholder controller of a licensed undertaking (company) must serve a written notice to the BMA.
3. Individuals associated with DABs are restricted from disclosing confidential information obtained in the course of their duties, unless authorized by the relevant parties.
4. Digital Asset Issuance entities are restricted from conducting digital asset issuances in or from within Bermuda without authorization from the BMA.

What are the main information that DABs have to make available to its customers?

Under the powers granted by DABA, the BMA has established the Digital Asset Business (Client Disclosure) Rules 2018 to address the significant risks associated with digital assets,

particularly their speculative and volatile nature. These rules are designed to protect consumers by ensuring transparency and disclosure of material risks associated with digital asset products, services, and activities.

Key provisions of the Digital Asset Business (Client Disclosure) Rules 2018 include:

1. Licensees must disclose to customers all material risks associated with their products, services, and activities, as well as any additional disclosures deemed necessary by the BMA for client protection.
2. Before entering into a business relationship with a client, licensees must disclose information such as the class of license held, fee schedules, insurance coverage against loss of customer assets, irrevocability of digital asset transfers or exchanges, governance or voting rights regarding client assets, and liability for unauthorized or mistaken transactions.
3. Licensees are obligated to confirm certain transaction details with clients at the conclusion of each transaction, ensuring transparency and clarity regarding the terms and outcomes of digital asset transactions.

What market misconduct legislation/regulations apply to digital assets?

A brief overview of the various market misconduct provisions in Bermuda legislation that may apply to digital assets is set out below:

1. *DABA & DAIA*: for the minimization of fraud, money laundering, and terrorist financing risks, alongside the promotion of top-tier corporate governance standards and robust risk management practices throughout the industry.
2. *AML/AFT*: The BMA has issued sector-specific guidance notes on anti-money laundering and anti-terrorist financing tailored for digital asset financial institutions. These guidelines are aligned with FATF regulations to ensure compliance and uphold the integrity of Bermuda's digital asset sector.
3. *International Cooperation Policy*: This policy outlines clear targets, procedures, and actionable goals that adhere to global standards for international cooperation with foreign supervisors and law enforcement agencies. Developed in alignment with the BMA's objective of offering a broad spectrum of international cooperation techniques, the policy establishes effective gateways to facilitate prompt and constructive exchanges directly between counterparts. By promoting transparency, collaboration, and adherence to global standards.

4. Regulation of other crypto-related activities in Bermuda

Are managers of crypto funds regulated in Bermuda?

Managers of crypto funds in Bermuda are regulated, depending on the type of fund structure they are managing. For instance, managers of open-ended Bermuda exempted

companies, which focus on trading digital assets and allow investors to redeem their investments at their own initiative, fall under the regulatory purview of the BMA and need to obtain the necessary licensing or exemptions under the DABA.

On the other hand, managers of closed-ended Bermuda exempted limited partnerships, which typically invest in long-term digital asset startups or projects and have illiquid investment strategies, are also regulated by the BMA. However, instead of requiring licensing under the DABA, these closed-ended funds need to be registered with the BMA.

When it comes to client assets, they must ensure strict separation from its own assets, act as a fiduciary for clients' holdings, maintain accurate accounting records, and establish effective controls aligned with the business's characteristics.

However, certain types of funds may qualify for an exemption from licensing under the DABA if they appoint an investment manager licensed under the Investment Business Act 2003 or authorized by a recognized regulator. This exemption is provided under the Digital Asset Business Exemption Order 2023, contingent upon the submission of an annual notice to the BMA.

Are distributors of digital asset funds regulated in Bermuda?

In Bermuda, distributors planning to distribute digital assets with the primary purpose of raising capital for a venture or project must obtain authorization from the BMA under the DAIA. Conversely, distributors intending to distribute digital assets with characteristics of a business, such as continuous issuance with the aim of generating profit, are required to obtain a DAB license from the BMA.

Distributors handling open-ended Bermuda exempted companies, which engage in trading digital assets and offer investor redemption must acquire the necessary licensing or exemptions DABA to operate compliantly. Similarly, distributors of close-ended funds in Bermuda exempted limited partnerships, which typically invest in long-term digital asset startups or projects with illiquid strategies must register with the BMA to ensure regulatory compliance.

Are there requirements for intermediaries seeking to provide trading in digital assets for clients or advise clients on digital assets in Bermuda?

Intermediaries seeking to provide in digital assets or digital asset derivatives in or from within the Bermuda are required to be licensed by the BMA to engage in the trading activities for clients.

However, the regulation of Bermuda does not encompass entities involved in advisory of clients on digital assets and the requirement for registration or licensing of such entities would be based on case to case basis depending upon the scope of activities, complexity etc on a proportional basis.

5. Government outlook on digital assets and crypto-related activities in Bermuda

The Bermuda government's mindset in framing legislation on digital assets is an approach to addressing the high risks of ML/TF associated with the DAB sector. Recognizing the inherent vulnerabilities, legislations are designed to mitigate these risks by implementing robust regulatory measures. Understanding that DAB transactions are often fast, irreversible, and may involve cash or digital assets outside traditional financial institutions, Bermuda's legislation aims to establish regulatory oversight with detailed analysis of this new technology. Acknowledging the cross-border nature of DAB activities and the potential for anonymity or false identities to be exploited, the government emphasizes the importance of stringent AML/ATF policies, procedures, and controls.

6. Advantages of setting up a DAB in Bermuda

Financial & Tax Incentives:

In Bermuda, there are no taxes levied on digital assets, including income taxes, capital gains taxes, withholding taxes, or any other taxes related to transactions involving digital assets. This tax-friendly environment is conducive to fostering the growth and development of the digital asset industry within the jurisdiction.

Additionally, exempted companies or limited liability companies engaged in digital asset business activities, including digital asset issuers, have the opportunity to apply for an undertaking from the Minister of Finance. This undertaking ensures that in the event Bermuda enacts legislation imposing taxes on profits, income, capital gains, or other related areas, such taxes will not apply to the company or its operations.

This favorable tax regime further enhances Bermuda's attractiveness as a jurisdiction for digital asset businesses, providing certainty and stability for companies operating within its borders. It also aligns with Bermuda's broader efforts to encourage innovation and economic diversification through the facilitation of digital asset-related activities.

Pro-Business Legal Framework:

Bermuda's legal framework is based on the common law principles of England and Wales, owing to its status as a British Overseas Territory and governance under a Westminster-style government. The judicial system includes the Court of Appeal, Supreme Court, Magistrates' Court, and various tribunals. Most cases can be appealed to the Privy Council in England, which serves as the final appellate authority.

March 2024

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British Virgin Islands

1. Virtual asset laws and regulations in the British Virgin Islands (BVI)

Virtual assets are regulated in BVI under the provisions of Virtual Assets Service Providers Act, 2022 (**Act**). The Act came into force on 1 February 2023 under the Authority of the Financial Services Commission (**FSC**). Along with the Act, the FSC issued the Virtual Assets Service Providers Guide to the Prevention of Money Laundering (**PML**), the Terrorist Financing (**TF**) and Proliferation Financing (**PF**) and **BVI FSC Guidance on Application for registration of a Virtual Assets Service Providers** on 1 February 2023. Other relevant legislation and guidance will be referenced including the Financial Services (Regulatory Sandbox) Regulations, 2020 (**Sandbox Regulations**) and the Guidance on Regulation of Virtual Assets in the Virgin Islands, 2020. The aforementioned virtual asset laws and regulations deals with virtual assets and offerings of virtual assets.

What is considered a virtual asset in the BVI?

Pursuant to the Act, virtual assets in the BVI are defined as digital representations of value capable of digital trade or transfer. Notably, these assets can serve purposes of payment or investment. However, the definition excludes digital representations of fiat currencies and other assets as specified in guidelines, as well as digital records of credits against financial institutions and securities or other financial assets that can be transferred digitally.

As stablecoins are pegged to the value of the dollar or some other asset, it would likely fall within the definition of virtual asset under the Act given that it is not a digital representation of fiat currency or other asset but pegged to its value. Although non-fungible tokens (**NFTs**) are not specifically mentioned in the definition of virtual asset, it is likely that it would also fall within the definition of virtual asset only where they satisfy the definitions in the Act.

Who do such laws and regulations apply to?

The Act and other relevant virtual asset laws and regulations apply to persons or entities providing virtual assets services, virtual assets custody service or virtual assets exchanges in the BVI. The definition of `virtual assets' as set out within the act is also applicable to persons providing digital assets as a business for or on behalf of another natural or legal person. Any service that encompasses virtual assets, or engagement of activities to setup a Decentralized Finance platform, the sale of Non-Fungible Tokens, the operation of Peer-to-Peer financing platforms, or other innovative concepts related to virtual assets may fall in scope of the Act only wherethey satisfy the definitions in the Act. The term virtual assets services refers to conducting business on behalf of another natural or legal person in any activity related to virtual asset service providers (**VASPs**).

Under the Act, VASPs are defined as an entity engaging in the business of providing virtual asset services. Such services include:

1. exchanges between virtual assets and fiat currencies;
2. exchanges between various forms of virtual assets;
3. transfers of virtual assets on behalf of others;
4. safekeeping or administration of virtual assets;
5. participation in financial services related to a virtual asset issuer's offerings; and
6. other activities specified in the Act or prescribed by regulations which from time to time which the FSC may prescribe from time to time being involved in virtual asset activity.

The term 'offerings' under the Act is defined to be any specific offer to the public for potential subscription or purchase of virtual assets. It includes buying and selling of any virtual assets. Offering can be associated with the business activities linked with virtual asset exchanges where sale and purchase of virtual assets are conducted.

Who are the relevant regulatory authorities in relation to virtual assets in the BVI?

VASPs in the BVI are registered and regulated by the FSC and any reporting or licensing in respect of virtual assets is done through the FSC. Other key governmental agencies include office of the Governor's Office, Attorney General's Chambers Royal Virgin Islands Police Force (**RVIPF**), the BVI Financial Investigation Agency (**FIA**), and the International Tax Authority (**ITA**).

What are the penalties for breaches of virtual asset laws and regulations in the BVI?

The table below sets out the main offences and applicable penalties for contravention of the Act:

Offence	Sections of the Act	Consequence for companies	Consequence for individuals
Carrying on virtual assets service without being registered	5(1)	US$100,000 or 5 years imprisonment or both	US$75,000 or 5 years imprisonment or both
Individual carrying on or holding out as carrying on virtual assets service	5(2)	N/A	US$75,000 or 5 years imprisonment or both
Failure to notify the FSC of material change	8(1) & (2)	US$75,000 or 3 years imprisonment or both	US$50,000 or 3 years imprisonment or both
Failure to comply with a directive	8(3)	US$50,000	US$30,000
Failure to maintain financially sound condition	10	US$75,000 or 3 years imprisonment or both	US$50,000 or 3 years imprisonment
Failure to keep sufficient records	22(1)	US$75,000 or 5 years imprisonment or both	US$50,000 or 3 years imprisonment
Failure to maintain customer due diligence information	22(2)	US$75,000 or 5 years imprisonment or both	US$50,000 or 3 years imprisonment
Failure to maintain records for the prescribed period	22(3)	US$75,000 or 5 years imprisonment or both	US$50,000 or 3 years imprisonment
Non-compliance of Anti-Money Laundering (**AML**) and Counter Terrorist Financing (**CFT**) requirements or to put systems and procedures in place	25(1)	US$100,000 or 5 years imprisonment or both	US$75,000 or 5 years imprisonment
Failure to adopt measures to trace and collect information such as Internet Protocol (**IP**) addresses, associated dates, stamps, geographical data, device indicators, virtual asset wallet addresses and transaction hashes and in other information relating to its customers as is consistent with the Data Protection Act, No. 3 of 2021.	25(2)	US$100,000 or 5 years imprisonment or both	US$75,000 or 5 years imprisonment
VASP providing innovative FinTech without approval of FSC	34(1)	US$100,000 or 5 years imprisonment or both	US$75,000 or 5 years imprisonment

2. Regulation of virtual assets and offerings of virtual assets in the BVI

Are virtual assets classified as 'investments' or other regulated financial instruments in the BVI?

In the BVI, virtual assets are not generally classified as 'investments' but instead are defined as a digital representation of value that can be digitally traded or transferred and which has the necessary capacity to be used for payment or investment purposes. That said, virtual assets maybe classified as 'investments' if it demonstrates the characteristics of securities as outlined in Securities and Investment Business Act, 2010 (**SIBA**) which generally includes tokens representing interests in collective investment schemes (mutual funds), with attached equity rights, those creating or acknowledging debt as debentures, instruments like warrants enabling stock purchase, certificates conferring virtual asset rights, options, futures contracts, and contracts for differences. Compliance with these characteristics determines whether a token falls under specific paragraphs of Schedule 1 of SIBA, outlining its classification as a security. This is generally fact-specific and the functionality and characteristics of the token or virtual asset would need to be assessed. The SIBA is the primary piece of legislation regarding securities and investment business in the BVI, providing for the licensing and control of persons engaged in investment business in or from within the BVI.

In particular, where a virtual asset, product or service provides a benefit or right beyond a medium of exchange, it may be captured under SIBA upon which the VASP would require a licence under the SIBA framework. Where a virtual asset product issued is an interest in a collective investment scheme, or a virtual asset might be used in cases where the rights attached thereto would grant the holder a share or equity interest would be considered investment under the ambit of SIBA, or cases where a token or coin issued creates or acknowledges a debt or liability instrument may be deemed a debenture. In such circumstances, a licence would similarly be required under the SIBA framework. Therefore a careful assessment and analysis of the virtual asset is important to determine whether they may be captured by the SIBA. A person who is not carrying on an investment business under SIBA may still bring themselves within the licensing requirements where they hold themselves out as carrying out an investment business.

SIBA requires individuals or entities engaging in any form of investment business within or from the BVI must do so through a regulated and licensed entity, unless falling under safe harbors outlined in SIBA. The classification of virtual assets under the SIBA regime hinges on whether they share characteristics similar to traditional investments like shares. Such factors that should be considered include the nature and features of the relevant virtual asset.

Are stablecoins and NFTs regulated in the BVI?

As stablecoins are pegged to the value of the dollar or some other asset, it would likely fall within the definition of virtual asset under the Act given that it is not a digital representation of fiat currency. Although NFTs are not specifically mentioned in the definition of virtual asset, it is likely that it would also fall within the definition of virtual asset only where they satisfy the definitions in the Act. Stablecoins and NFTs should also be considered in the context of the SIBA framework and assessed on a fact-specific basis to determine whether they would constitute an 'investment', which would necessitate a license under the SIBA framework as well.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in the BVI?

Decentralised finance activities may fall in scope of the Act only where they satisfy the definitions in the Act. These are covered under the term of innovative FinTech which is covered under the Sandbox Regulations and the Act. The term 'Innovative FinTech'means the development or implementation of a new system, mechanism, idea, method, or other arrangement through the use of technology to create, enhance or promote a product or service with respect to the conduct or provision of a financial services business. These include all the financial activities facilitated by electronic platforms where borrowers are matched directly with lenders categorized as peer to peer lending and online lending or other novel concepts involving virtual assets. It must be noted that DeFi may fall in the scope of the Act only where they satisfy the definitions in the Act.

Are there any restrictions on issuing or publicly offering virtual assets in the BVI?

Entities seeking to publicly offer Virtual Assets in the BVI are required to be licensed by the FSC under the Act. There are restrictions under the Act where the public offering is against the public interest or associated with money laundering, terrorist financing and proliferation financing.

Where the virtual asset is classified as an 'investment' and falls within the scope of the SIBA framework, any public offering must be based on a prospectus registered with the FSC and must comply with such requirements as may be prescribed by the FSC as well as the requirements set out in the Public Issuers Code.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in the BVI?

For virtual assets that fall within the scope of the SIBA framework, there is an exemption from the abovementioned restrictions where the offer is made to qualified investors, a person having a close connection with the issuer or offers made to the government of the BVI. As defined in SIBA, a qualified investor includes certain entities which are regulated by the BVI, a company (any securities of which are listed on a recognised exchange) and persons defined as professional investors under SIBA.

3. Regulation of VASPs in the BVI

Are VASPs operating in the BVI subject to regulation?

Yes, a person who wishes to carry on in or from within the BVI the business of providing virtual asset services must apply to the FSC for registration as a VASP. Licensed VASPs are able to (i) carry on the business of providing a virtual asset service; (ii) engage in the business of providing a virtual assets custody service; or (iii) operate a virtual asset exchange.

Are VASPs providing virtual asset services from offshore to persons in the BVI subject to regulation in the BVI?

Yes, any offshore VASP that wishes to provide virtual asset services to persons in the BVI will need to be registered or licensed with the FSC based on the nature of services rendered by VASP and the requirements associated with it the Act.

What are the main requirements for obtaining licensing / registration as a VASP in the BVI?

Part II Section 5 & 6 of the Act sets out the relevant requirements for registration of VASPs which includes various provisions relating to the registration procedures and documentation requirements.

The application for applying to the FSC to be registered as a VASP must include, amongst others, the following information:

1. details about the physical address of the applicant in the BVI;
2. names and addresses of directors and senior executives, shareholder information, auditor details of the applicant, authorized representative; and
3. a written risk assessment of the applicant outing the risks that the applicant may be exposed to and specifying how those risks are to be assessed and controlled;
4. a written compliance manual of the applicant demonstrating how it intends to comply with the relevant requirements of the Act and any regulations, including measures to safeguard against money laundering, terrorist financing, and proliferation financing activities;
5. a detailed comprehensive business plan of the applicant setting out the knowledge and expertise, size scope and complexity of the applicant as well as how the applicant will be marketed, anticipated human resource capacity, outsourcing arrangements and their governance arrangements; and
6. details of internal safeguards, including data protection and cybersecurity systems, intended to be utilised by the applicant;
7. a system outlining how the VASP will handle client assets, custodian relationships, and complaints.

The FSC has the power to request additional information as it may consider appropriate in support of the application. The directors, senior officers and other relevant persons of the applicant must also meet the "fit and proper" requirements.

Under section 7 of the Act, for a VASP registration application to be approved the following criteria must be met:

1. the applicant, as well as its directors, senior officers, and individuals with a significant or controlling interest, satisfy the fit and proper criteria outlined in Schedule 1A of the Regulatory Code, Revised Edition 2020;
2. the organisational structure, management practices and financial resources of the proposed VASP are currently adequate or will be adequate upon registration to conduct VASP business;
3. if registered as a VASP, the applicant has or will acquire the ability and capacity to manage and mitigate the risks associated with VASP business activities. This includes detecting and preventing activities involving the use of anonymity-enhancing technologies or mechanisms (like mixers, tumblers, and similar technologies) that obscure the identity of the sender, recipient, holder, or beneficial owner of a virtual asset; and
4. the registration of the applicant is not contrary to the public interest.
5. the auditor designated for the applicant has given consent and is approved by the FSC

Applicants seeking to provide virtual asset custodian or virtual asset exchange services must comply with the requirements as set out in section 27 and section 30 of the Act respectively, which relates to, amongst others, information about the facilities that enable safe keeping of virtual assets, security measures, internal safeguards and disclosure measures.

Two declarations are mandatory for all VASP applications prior to submission. The first declaration should be completed by the Applicant's Authorised Representative or another representative responsible for submitting the application. The second declaration is to be filled out by the Applicant themselves. In both instances, individuals making the declarations must confirm that the information provided to the FSC regarding the application is true and accurate.

The table outlines the necessary fees for the registration process of a VASP in the BVI. The application fee is required to be deposited along with a complete application form and relevant supporting documents in accordance with sections 5 and 6 of the Act. Upon approval, the registration fee should be submitted to the FSC for the official registration of the VASP, following the directions provided by the FSC. Additionally, an annual renewal fee is to be paid each year to the FSC.

Category of entity	Amount (US$)
Application for registration as a VASP	$5,000
Application for registration as a VASP providing virtual assets custody service	$10,000
Application for registration as a VASP operating a virtual assets exchange	$10,000
Approval of registration of a VASP (a) Initial registration fee (b) Annual renewal of registration fee	$7,500 $7,500
Approval of registration of a VASP providing virtual assets custody services: (a) Initial registration fee (b) Annual renewal of registration fee	$15,000 $15,000
Approval of registration of a VASP operating a virtual assets exchange: (a) Initial registration fee (b) Annual renewal of registration fee	$25,000 $25,000
Application by a VASP under 34(1), (3) of the Act to participate in the Regulatory Sandbox to provide innovative FinTech in relation to virtual assets	$1,000
Approval of Application by a VASP and issuance of certificate of approval to provide FinTech in relation to virtual assets	$1,500

What are the main ongoing requirements for VASPs regulated in the BVI?

VASPs registered in the BVI are subject to the certain ongoing obligations under the Act including, amongst others, the following:

1. ensuring that the requirements and documentation under which they were granted registration are kept up to date, and under section 8 of the Act, VASP must forthwith notify the FSC if there is any material change in the information provided;
2. ensuring that it remains fit and proper and specifically maintains adequate resources(human and technological) and appropriate policies, procedures and mechanisms in place to ensure compliance;

3. submitting a copy of its auditor's report concerning the it's financial statement to the FSC within six months of the end of financial year (which can be extended by six months upon application);
4. recording and maintaining all customer due diligence information for its clients in accordance with the requirements of any legislation related to AML, TF, and PF for at least five years;
5. informing the FSC about significant developments, changes in jurisdictional presence, legal actions, acquisitions and any changes affecting the it's compliance with specified matters outlined in section 7(1) of the Act; and
6. adopting best practices in information technology for the safekeeping of virtual assets and related instruments maintained on behalf of the client and protect virtual assets and related instruments against theft and loss.

Other obligations include filing of annual returns, filing of annual financial statements and filing annual compliance officer reports. Failure to file these would result in enforcement action by the FSC including the levy of fines.

Additionally, directors, senior officers and other relevant persons of VASPs must continue to comply and satisfy with the "fit and proper" criteria outlined in the Regulatory Code, Revised Edition 2020.

What are the main restrictions on VASPs in the BVI?

VASPs in the BVI are restricting from, amongst others, the following:

1. conducting its business against the public interest or conducting business involving money laundering, terrorist financing, proliferation financing;
2. encumbering or causing to be encumbered the virtual asset deposits held or maintained on behalf of its clients unless explicitly agreed upon with the beneficial owners of those virtual assets; and
3. issuing a virtual asset which has a underlying characteristics of securities or other financial assets without an appropriate license as required by FSC under SIBA licensing framework

Additionally, VASPs are also under an obligation to ensure that they are not issuing advertisements, statements, brochures, documents, promises or forecasts which may be misleading or contains incorrect statements.

For licensed VASPs operating virtual asset exchanges, they are also restricted from:

1. providing financing to clients for the purchase of virtual assets unless approved by the FSC and terms of financing and the risk associated to it are disclosed to clients;
2. engaging in trading or marketing activities for its benefit that may be detrimental to its clients, unless necessary for the exchange's operation and disclosed to its clients;
3. allowing misleading or deceptive trading of virtual assets on its exchange designed to defraud subscribers or purchasers;

4. permitting its clients to trade or purchase a virtual asset without ensuring the client is aware of the risks and making required disclosures;
5. providing fiat currency-to-fiat currency exchange services without the written approval of the FSC; and
6. engaging in any other activity not specified above with the potential to compromise the integrity of the virtual assets exchange or erode public confidence.

What are the main information that VASPs have to make available to its customers?

In the event of an unlawful interference or if the client's virtual assets are compromised, the VASP must notify its customer of such circumstances and further inform the client of the steps it has taken or is taking to restore the client's virtual asset and protect the virtual assets from any further unlawful interference or from otherwise being compromised.

A VASP providing custodian services must enter into safekeeping arrangements with the owner of a virtual asset and related instruments which should set out relevant including, amongst others, the duration, terms of renewability, manner of holding, transaction engagement conditions, required disclosures on associated risks and the steps taken to mitigate them, fees, terms of client access, termination conditions, provision of security measures information, available remedies in case of theft or loss, and any other matters agreed upon by the client and the VASP or specified by the FSC from time to time.

What market misconduct legislation/regulations apply to virtual assets?

A brief overview of the various market misconduct provisions in BVI legislation that may apply to virtual assets is set out below:

1. *VASP Act*: provides for relevant rules and requirements concerning conduct of VASPs registered in the BVI and includes various offences including, amongst others, carrying out virtual asset services without licensing;
2. *SIBA*: provides for requirements for licensing of entities engaged in investment services in the BVI and includes various offences including, amongst others, carrying out investment services without licensing; and
3. *AML / TF / PF regulations*: VASPs are required to comply with the Anti-money Laundering and Terrorist Financing Code of Practice (**AMLTFCOP**) and the Anti-money Laundering Regulations (**AMLR**) which imposes various reporting requirements on VASPs to mitigate such risks. AML/CFT/PF are further dealt with in Proceeds of Criminal Conduct Act (**PCCA**), Criminal Justice (International Cooperation) Act, Counter Terrorism Act, Proliferation financing (Prohibition) Act, and the relevant orders in council related to terrorism and terrorist financing;
4. *Economic Substance requirements*: The Economic Substance (Companies and Limited Partnerships) Act (**ESA**) and the Beneficial Ownership Secure Search System Act (**BOSSSA**) requires the BVI legal entities to notify and submit their economic substance

declarations. Any BVI legal entity that fails to do so will be subject to enforcement actions by the competent authority, i.e. the International Tax Authority (**ITA**).

4. Regulation of other crypto-related activities in the BVI

Are managers of crypto funds regulated in the BVI?

The managers of crypto funds or the act of managing crypto funds in or from within the BVI are not explicitly excluded, and there are no specific restrictions on their operations provided in the Act. The determination of the applicability of BVI regulations to these entities is based on specific facts related to the concerned entities. To understand the nature and extent of applicability of BVI laws and regulations, a comprehensive analysis of crypto funds and the activities involving their management by experts is considered necessary.

The BVI adopts a case-by-case approach, taking into account the specific characteristics and operations of crypto funds. The regulatory framework in the BVI is designed to adapt to emerging financial technologies and digital assets. It recognizes the importance of expertise and a nuanced understanding of the crypto space, emphasising the need for careful consideration of the unique features associated with crypto funds.

Are distributors of virtual asset funds regulated in the BVI?

Distributors of virtual asset funds, or the act of distributing virtual asset funds for or on behalf of another person within or from the BVI, may be deemed a business activity of a VASP. Individuals or entities involved in this activity for or on behalf of others within the BVI may be considered providers of virtual asset services as part of their business operations, depending upon the nature of operations. The BVI adopts a case-by-case approach, considering the specific characteristics and operations of business activity related to virtual asset funds and its distribution. The regulatory framework is designed to adapt to emerging financial technologies and digital assets, recognizing the importance of expertise and a nuanced understanding of the crypto space.

The Act further clarifies that any mention of terms like 'funds,' 'property,' 'proceeds,' or other value-based terminology in financial services legislation is construed to include virtual assets, ensuring appropriate coverage and regulation within the existing financial services framework.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in the BVI?

To provide trading in virtual assets, intermediaries are required to be registered as VASPs by the FSC pursuant to the Act. For detailed registration requirements, please refer to the above.

BVI is silent on the point of advisory on virtual asset in BVI as advisory does not fall under the definition of virtual asset services as provided in the Act.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in the BVI?

No.

Has there been any notable events in the BVI that has prompted regulatory change recently?

No.

6. Pending litigation and judgments related to virtual assets in the BVI (if any)

The High Court (Commercial Division) of the BVI has delivered two notable judgments relating to virtual asset ownership in the BVI in the recent years. In the case of *Philip Smith v Torque Group Holdings Limited et al BVIHC (COM) 0031 of 2021*, the court held that crypto assets should be treated as assets or property for the purpose of a company's liquidation. In another notable judgment in the case of *Chainswap Limited v Persons Unknown &Ors BVIHC (COM) 2022/0031*, the court had granted a freezing order over assets held by persons unknown in relation to crypto fraud for the first time. In this case a link between the wallets and an exchange in Croatia was identified, pursuant to which the court signed a letter of request addressed to Croatian Courts for any available data in relation to the wallet.

The BVI courts are leading and developing the relevant jurisprudence in respect of virtual asset ownership and it is expected that other courts such as the Cayman Islands would likely follow a similar approach.

7. Government outlook on virtual assets and crypto-related activities in the BVI

The BVI is a leading financial offshore business centre. It has developed as an innovative and business friendly jurisdiction. The BVI is a self-governing dependent territory of the United Kingdom. BVI laws are a combination of common law and statute which are based heavily upon English law. The BVI had enacted the International Business Companies Ordinance in 1984, which marked the beginning of its journey as an offshore financial services jurisdiction. Since then, the BVI has been by far the most popular offshore tax haven with the greatest number of registered offshore companies among all the offshore jurisdictions in the world. Today 40% of the world's offshore companies are registered in the BVI.

The enactment of the Act in the BVI not only aligns the jurisdiction with global efforts to regulate virtual assets but supports its fostering of a secure and transparent FinTech environment. This move positions the BVI as a jurisdiction welcoming responsible innovation in the virtual assets space.

The BVI has implemented Sandbox Regulations, aimed at creating an environment conducive to the development and testing of FinTech solutions. The Sandbox Regulations aims to benefit various entities, including start-ups and licensed financial service providers, by providing a streamlined regulatory approach. Sandbox participants are entities or persons approved by the FSC pursuant to the Sandbox Regulations offering innovative FinTech for development or implementation of a new system, mechanism, idea, method, or other arrangements through the use of technology to create, enhance a product or service with respect to the conduct or provision of a financial service business. Start-ups approved as Sandbox participants before the enactment of the Act can notify the FSC in writing about their intention to provide innovative FinTech related to virtual assets. VASPs not registered under the Act but wanting to engage in virtual asset services while utilizing innovative FinTech under the Sandbox Regulations can submit an application to the FSC. The application should specify the intent to conduct the business of providing virtual asset services alongside the application of innovative FinTech.

8. Advantages of setting up a VASP in the BVI

BVI is a prominent offshore centre given its tax neutrality, confidentiality of data and information, simple reporting systems, asset protection and limited liability protection.

The main advantages of setting up a VASP in the BVI are:

1. *tax benefits*

   One of the main advantages of opting for a BVI offshore company lies in its highly favourable tax regime. In contrast to other jurisdictions, the BVI imposes no corporate, capital gains or income taxes on offshore companies. This translates into substantial tax savings, especially for businesses involved in international trade and investment. The absence of these taxes can significantly contribute to the bottom line, making the BVI an attractive choice for entrepreneurs and investors.

2. *confidentiality*

   Information relating to shareholders and directors is not publically accessible.

3. simplified reporting requirements

   The BVI aims to offering streamlined and straightforward reporting requirements for offshore companies. Annual reporting obligations are kept to a minimum, reducing administrative burdens and costs for business owners. VASP and similar entities are required to track and collect information for AML / CFT compliance such as tracing and collecting internet protocol addresses of its customers, associated dates, geographical data, wallet addresses and transaction hashes and other such data as is consistent with the BVI Data Protection Act, No. 3 of 2021. VASPs must retain records relation to AML/CFT/PF for a period of at least five years.

4. *asset protection*

   The BVI also has a robust legal framework through its asset protection laws. The BVI's commitment to providing a secure environment for asset protection enhances the overall risk management strategy for individuals or businesses establishing an offshore presence.

5. *asset division*

   There is a division of personal and corporate assets which safeguards the personal assets in case a lawsuit is brought against the business. According to section 109 of the Business Corporations Act (BCA), a company's operations are overseen by the directors, who have the authority to manage and supervise its business and affairs. However, in matters exclusively for shareholders, section 175 of the BCA serves as a crucial protection for shareholders, requiring that major decisions, such as the disposal of over 50% of a company's assets, require the explicit approval of the shareholders.

6. *limited liability protection*

   A BVI company can be established with a limited liability structure whereby shareholders or directors are legally responsible for the company's debts only up to the value of their shares. A company is a legal entity separate from its shareholders, which can sue and be sued in its own rights, and which has the full capacity of a natural person.

7. *taxation in the BVI*

   BVI entities have exemption from capital gains taxes, gift taxes, profits taxes, inheritance taxes, or estate duty. The BVI International Tax Authority has not issued specific statements on the taxation of virtual assets. It maintains a tax-neutral environment with a 0% income tax rate, relieving entities from the obligation to pay income tax to the BVI government. The entities are not required to file income tax returns. Instead, they must submit an annual economic substance declaration, a requirement introduced via the ESA. Although, during initial token or coin offerings, exchange operators should be aware of the implications of international tax regulations such as the Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standards (CRS). However foreign taxpayers taxed on worldwide income must declare all income to their respective governments.

January 2024

~CQ~

Cayman Islands

1. Virtual asset laws and regulations in the Cayman Islands

The regulatory landscape governing virtual assets in the Cayman Islands is governed by several key legislative instruments. The Virtual Assets (Service Providers) Law, 2020 which was enacted on May 25, 2020, serves as a foundational framework. Subsequent regulations, including the Virtual Assets (Service Providers) Regulations, 2020 enacted on October 28, 2020, and the Virtual Asset (Service Providers) (Savings and Transitional) Regulations, 2021, introduced on January 11, 2021, provide additional specifications and transitional provisions. The enactment of the Virtual Asset (Service Providers) Act (2022 revision) published on December 31, 2021, further refines the regulatory landscape. Notably, the Virtual Asset (Service Providers) (Amendment) Act, 2023, implemented on May 16, 2023, represents a recent update, reflecting the evolving nature of the virtual asset industry by the inclusion of various corporate structures and the clarification of responsibilities in case of default indicate a minute approach to addressing the complexities within the industry. The amendment also involves modifications to the definition of VASPs and outlines offenses related to incorporation, emphasising the need for accountability and compliance within the sector. This amendment, along with previous acts, regulations, and subsequent changes, will be collectively referred to as the **VASP Act** here. Complementing these acts are related legislative measures such as the Securities Investment Business (Amendment) Law, 2020 (**SIBA**), Anti-Money Laundering Regulations (2023 Revision) on January 12, 2023 (**AMLR**), and the Proceeds of Crime Law (2020 Revision) (**POCA**). The regulatory framework is further supported by the Mutual Funds Act (2021 Revision), Private Funds (Annual Returns) Regulations, 2021 (**PFA**), and the Monetary Authority (Administrative Fines) Regulations (2022 Revision) (Fines Regulations 2023). Additionally, the International Tax Co-operation (Economic Substance) Act (**ITCESA**) complements these regulations, underscoring the comprehensive approach adopted by the Cayman Islands in regulating virtual assets, ensuring compliance, and fostering a robust and transparent financial environment.

What is considered a virtual asset in the Cayman Islands?

The VASP Acts defines virtual assets as digital representations of value that can be digitally traded or transferred. These assets hold utility for both payment and investment purposes. It's important to note that within this definition, virtual assets exclude digital representations of fiat currencies, further under section 3(2) of VASP Act, explicitly excludes virtual service tokens as well. Virtual services tokens are digital representation of value which is non-transferable, non-exchangeable and non-refundable and their sole function is to provide access to an application or service or to provide a service or function directly to its owner such as credit card awards, or similar loyalty program rewards or points, which an individual cannot sell onward in a secondary market.

The definition of virtual assets specifically excludes a digital representation of fiat currency like Central Bank Digital Currencies (**CBDCs**) but stablecoins are pegged to the value of dollar or some other asset and are not sanctioned by state machinery, it would likely fall within the definition of virtual asset under the VASP Act. The definition of virtual assets is expansive and can be construed to cover stablecoins and security tokens. However the definition can be stretched to envelope utility tokens only to the extent where they are not covered under the definition of virtual services tokens. Non-Fungible Tokens (**NFTs**) are not subject to specific regulations under the VASP Act, however it might be covered under the definition of virtual assets on a case to case basis where characteristics of NFTs match with either virtual assets or securities. That said, NFTs that will satisfy and fall within the scope of virtual service tokens will not be considered as virtual assets.

Who do such laws and regulations apply to?

The VASP Act in the Cayman Islands encompasses all entities that are either currently engaged in or have the intention to provide virtual asset services. These services, as defined under the VASP Act, covers a range of activities, including the issuance of virtual assets and the provision of various services related to virtual assets. These services comprise the exchange between virtual assets and fiat currencies, exchange between different forms of convertible and non convertible virtual assets, transfer of virtual assets, virtual asset custody services, and participation in or provision of financial services linked to virtual asset issuance or sale. The definition ensures that it covers a wide range of entities, including issuers of virtual assets, virtual asset custodians, virtual asset trading platforms, and those offering financial services related to the sale of virtual assets, such as virtual asset dealers and intermediaries to the extent they come under the scope of definition under virtual asset services. The VASP Act provides a framework for the conduct of virtual asset business in the Islands, the registration and licensing of persons providing virtual asset services and for incidental and connected purposes.

In accordance with the VASP Act, the term “virtual asset service provider” includes the following types of entities:

1. virtual asset trading platforms;
2. virtual assets custodians such as wallet service providers;
3. virtual asset issuers, whether registered or licensed; and

4. professionals that participate in or provide financial services related to virtual asset issuance or the sale of a virtual asset;
5. existing licensees conducting virtual asset services (including virtual asset custodial services, virtual asset trading platform services and virtual asset issuance); and
6. any person facilitating (a) the exchange or transfer of virtual assets to/from another virtual asset or fiat currency, (b) the transfer of virtual assets, or (c) the exchange between one or more other forms of convertible virtual assets on behalf of another person or entity.

When assessing whether a particular activity qualifies as a virtual asset service in the Cayman Islands, it is crucial to analyse the nature of the service and its practical function. For instance, engaging in activities related to non-fungible tokens or virtual service tokens, even if not explicitly named as such, may still be categorised as virtual asset services if these tokens are intended for payment or investment purposes in practice. The determination of whether an activity falls under the definition of a virtual asset service should be made on a case-by-case basis, emphasising the practical implications and functions of the services provided, rather than relying solely on specific terminology.

Who are the relevant regulatory authorities in relation to virtual assets in the Cayman Islands?

In the Cayman Islands, the Cayman Islands Monetary Authority (**CIMA**) plays a crucial role in regulating and supervising the financial services industry, monitoring compliance with anti-money laundering regulations, and providing regulatory guidance through policies, procedures, rules, statements of principle and guidance. Additionally, the regulatory landscape for the FinTech industry is governed by designated authorities with specific responsibilities. The Financial Intelligence Unit (**FIU**), operating under the Cayman Islands' Financial Reporting Agency (**FRA**), is tasked with deterring, preventing, and detecting money laundering, terrorist financing, and proliferation financing. Additionally, the FIU oversees sanctions compliance. Further, the VASP and FinTech sector may encounter additional regulatory oversight from various authorities. The Department for International Tax Cooperation (**DITC**) supervises economic substance and automatic exchange of information. Beneficial ownership is monitored by the Cayman Islands Registrar, while data protection falls under the purview of the Cayman Islands Data Protection Ombudsman. These ancillary regulations complement the broader regulatory framework, ensuring a comprehensive approach to governing the VASP and FinTech industry in the jurisdiction.

What are the penalties for breaches of virtual asset laws and regulations in the Cayman Islands?

In the Cayman Islands, under section 37 of the VASP Act, individuals contravening any provision of the VASP Act without a specified penalty commit an offence. Upon summary conviction, such individuals may face a fine of four thousand dollars. Offences in the jurisdiction are classified into three levels – very serious, serious, and moderate – based on

the severity and nature of the violation. The penalties prescribed under the VASP Act are outlined in the table below:

Offence	Sections	Consequences
Contravention of applicable requirements on virtual asset custodian service provided under section 10 of VASP Act which includes net worth requirements, reporting requirements and client disclosure requirements etc.	10(4)	Fine of US$100,000
Carrying on virtual asset services without registration	35(1)	Fine of US$25,000 and imprisonment for one year
Carries on virtual asset custody services in or from within the Cayman Islands without license	35(3)(a)	Fine of US$100,000 and imprisonment for one year
Operate a virtual asset trading platform in or from within the Cayman Islands without license	35(3)(b)	Fine of US$100,000 and imprisonment for one year

2. Regulation of virtual assets and offerings of virtual assets in the Cayman Islands

Are virtual assets classified as 'investments' or other regulated financial instruments in the Cayman Islands?

In Cayman Islands, virtual assets are not generally classified as 'investments' but instead are defined as a digital representation of value that can be digitally traded or transferred and which has the necessary capacity to be used for payment or investment purposes. That said virtual asset may be classified as securities if it demonstrates the characteristics as outlined in SIBA. It is noteworthy that the definition of "securities" within SIBA encompasses virtual assets that can be immediately sold, traded, or exchanged, and either represent or can be converted into traditional securities forms (such as equity interests, debt instruments, options, or futures), or represent a derivative of traditional securities. Any entity established, registered, or operating within the Cayman Islands engaging in the dealing, arranging, managing, or advising on the acquisition or disposal of digital assets may fall under the purview of SIBA to the extent that the involved digital assets qualify as "securities" as defined by SIBA. Such entities might be required to obtain registration or licensing from the CIMA under SIBA framework. That said, this requirement may be in addition to obtaining registration or a license mandated under the VASP Act. Although the CIMA reserves rights to waiver such obligation upon application by an applicant entity to CIMA, if they are satisfied that regulation of such entities is better suited under VASP Act due to the technology involved and complexity of the business activity.

Are stablecoins and NFTs regulated in the Cayman Islands?

As stablecoins are pegged to the value of dollar or some other asset, it would likely fall within the definition of virtual asset under the act given that it is not a representation of fiat currency. Non-fungible tokens are regulated under the Cayman Islands regulations to the extent where they fall under the definition provided under the VASP Act. However virtual service tokens which are defined as non transferrable or exchangeable with any third party at any time are outside the ambit of the regulations of Cayman Islands. The exclusion is limited to the scope of virtual service tokens whose sole function is to provide access to an application or services or to provide a service or function directly to its owners.

NFTs are not subject to specific regulations under the VASP Act, however it might be covered under the definition of virtual assets on a case by case basis where characteristics of NFTs match with either virtual assets or securities. That said, NFTs that will satisfy and fall within the scope of virtual service tokens will not be considered as virtual assets. Any NFTs having characteristics of virtual services tokens are not regulated in Cayman Islands nor are the person or legal entity engaged in such business activity required to have a license or registration under the VASP Act.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in the Cayman Islands?

The Cayman Islands do not aim to regulate the technology behind virtual assets but focus on the individuals or entities using technology or software applications to conduct virtual asset services as a business. Those involved in developing or selling software applications or new virtual asset platforms (such as FinTech service providers) are not considered VASPs solely for developing or selling the application or platform. However, they may be classified as VASPs if they use the application or platform to engage in virtual asset services on behalf of others. Similarly, decentralized finance (DeFi) applications themselves are not VASPs, but individuals or entities involved in creating, owning, operating, or maintaining control over DeFi arrangements may fall under the FATF definition of a VASP if they provide or actively facilitate VASP services. It may fall under the scope of the regulations VASP Act only to the extent they are covered under the definitions of FinTech services. The term 'FinTech services' under the VASP Act means services that uses technology to improve, change or enhance financial services but FinTech services are not considered as virtual asset services under the VASP Act. In absence of regulatory guidance on financial services related to virtual assets, entities involved in financial business activities must seek instructions either in form of registration or waiver from CIMA to conduct their business.

The determination of whether an activity falls under the regulations should be made on a casebycase basis, emphasising the practical implications and functions of the business activity.

Are there any restrictions on issuing or publicly offering virtual assets in the Cayman Islands?

Entities seeking to publicly offer Virtual Assets in the Cayman Islands are required to be licensed by the CIMA under the VASP Act. The issuance of virtual assets is subject to restrictions when there is a material risk to the welfare of the public and the stability of the financial services in the Cayman Islands

Under section 7(1) of the VASP Act, a registered person is prohibited from issuing virtual assets directly to the public in excess of the prescribed threshold Restrictions on the public offering of virtual assets are in place to prevent disruption or prejudice to the CIMA's functions, the public's interests, or the financial services in the Islands. These measures are designed to regulate and safeguard the issuance of virtual assets, ensuring adherence to established thresholds and maintaining the stability of the financial environment in the Cayman Islands.

In the context of virtual asset issuance, the CIMA's decisions hinge on whether a sale of newly created virtual assets to the public within the Cayman Islands is deemed applicable. This determination is guided by the assessment of various factors, including:

1. the CIMA evaluates whether the virtual asset sale is advertised through promotional materials, announcements, or statements in a manner accessible to individuals or entities within the Cayman Islands. The participation of local entities or individuals in the issuance, either directly from the issuer or indirectly through a third party facilitating the sale, is a key consideration;
2. for offering from within the Islands, a person or entity listed in section 3(1) of the VASP Act offers newly created virtual assets for sale from within the Cayman Islands, the CIMA examines whether the sale is not advertised locally, and individuals or entities within the Islands are not able to participate in the issuance; and
3. the CIMA distinguishes between a private sale and a public sale. A private sale involves a limited number of persons or entities selected through a private agreement and is not subject to public advertisement. Whereas a public sale of virtual assets are made to the public at large and CIMA requires advertisement of such assets before they are sold to the public.

Where the virtual asset is classified as a 'securities' and falls within the scope of the SIBA framework, the entity must acquire a license under SIBA framework or a waiver from CIMA to issue such assets.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in the Cayman Islands?

Despite the provisions in section 7(1) and 7(1A) of the VASP Act, a registered person is permittedto involve one or more virtual asset trading platforms that are either obliged entities or licensed under the VASP Act for the issuance of newly created virtual assets exceeding the prescribed threshold. In this scenario, the issuance of virtual assets is facilitated through these virtual asset trading platforms.

3. Regulation of VASPs in the Cayman Islands

Are VASPs operating in the Cayman Islands subject to regulation?

Yes, a person who wishes to carry on in or from within the Cayman Islands involved in the business of providing virtual asset services must apply to the CIMA for registration as a VASP. Licensed VASPs are able to (i) carry on the business of providing a virtual asset service; (ii) engage in the business of providing a virtual assets custody service; or (iii) operate a virtual asset exchange.

Are VASPs providing virtual asset services from offshore to persons in the Cayman Islands subject to regulation in the Cayman Islands?

Yes, any offshore VASP that wishes to provide virtual asset services to persons in the Cayman Islands will need to be registered or licensed with the CIMA based on the nature of services rendered by VASP and the requirements associated with it the VASP Act.

What are the main requirements for obtaining licensing / registration as a VASP in the Cayman Islands?

Section 6(1) of the VASP Act outlines the relevant requirements and fee for registration of VASPs along with procedures and documents required by the CIMA. CIMA requires that entities engaged in or wishing to engage in virtual asset services must complete the two application forms for VASPs (APP-101-84 and APP-101-84a) which are available on `REEFS' portal. The applicant, as part of outlining the requirements, is mandated to furnish details such as its name, any previous names or trading names, date and places of formation, legal entity identifier, legal structure, and registration number. The applicant is also required to disclose its licensing or registration status in other jurisdictions, including relevant details such as the date of commencement, licensing authority, and any associated requirements or restrictions. Additionally, the applicant must provide information about its involvement or control over other entities engaged in virtual asset services in various jurisdictions. The applicant further needs to highlight any virtual asset services provided in jurisdictions outside those listed initially. Lastly, the applicant is obligated to acknowledge and disclose any penalties or enforcement actions imposed in other jurisdictions.

The application for registration as a VASP requires the submission of various documents along with application forms APP-101-84 and APP-101-84a.

The application for applying to the CIMA to be registered as a VASP must include, amongst others, the following information:

1. the nature, function and purpose of the virtual asset service;
2. the revenue for the prior twelve months or, if unavailable, the projected revenue for the twelve month period following an application for each virtual asset service to be provided;
3. the manner in which the virtual asset service will be provided to the public; and
4. identified risks associated with the virtual asset service, including data security risks and steps put in place to mitigate these risks, including any insurance arrangements;
5. provide an outline of internal safeguards and data protection systems that will be put in place to protect the assets and data of clients;
6. copies of cyber security policies following CIMA's guidance on cyber security;
7. copies of Anti-Money Laundering/Counter Financing of Terrorism policies in line with the Anti-Money Laundering Regulations and Guidance Notes;
8. comprehensive business plan;
9. transaction flow charts;
10. details of outsourced arrangements and related agreements.

11. completed Declaration of Source of Funds/Source of Wealth form with supporting evidence for major shareholders;
12. list of the applicant's blockchain addresses (per coin);
13. details of all shareholders with more than a 10% shareholding along with a completed CIMA personal questionnaire;
14. information on Chief Information Officer/Chief Information Security Officer;
    - 14.1 certified copies of academic and professional qualification certificates of senior management staff;
    - 14.2 police Clearance certificate or affidavit of no criminal convictions;
    - 14.3 a fully completed Personal Questionnaire;
    - 14.4 two character references;
    - 14.5 one financial reference;
    - 14.6 an updated and comprehensive curriculum vitae;
15. details of each Anti-Money Laundering Compliance Officer, Money Laundering Reporting Officer, and Deputy Money Laundering Reporting Officer;
16. if the service provider be issuing virtual assets, the entity shall complete an issuance request form and include it with this application.

Apart from the VASP Act, entities offering virtual asset services in the Cayman Islands are obligated to adhere to Anti-Money Laundering, Countering the Financing of Terrorism, and Countering Proliferation Financing (AML/CFT/CPF) requirements, as well as sanctions obligations outlined in the AMLR and the CIMA's Guidance Notes.

Every application for registration requires a KYD 1,000 assessment fee, payable through the REEFS portal at the time of submitting the application. It should be noted that the assessment fee paid to the CIMA is non-refundable. Additionally, registrants are obliged to pay the application fee upon approval of their registration application as per the specifications provided by the CIMA. The table below provides for fee as required to be paid by applicant/approved entity as the case may be;

Category	Sections	Fee (in KYD)
Assessment fee for registration (fee applies to all applications for registration)	6(1)	$1000
Application fee for registration of an existing licensee or person already registered under another regulatory Law	5(2)	$1,000

Category of VASP	Amount Raised/ Revenue generated	Category	Fee (in KYD)
VASP engaging in issuance of virtual assets only	Not exceeding one million dollars	Issuance of not convertible virtual assets through exchanges	$1,500
	Not exceeding one million dollars	Issuance of not convertible virtual assets directly to the public	$2,500
	Not exceeding one million dollars	Issuance of convertible virtual assets	$2,500 - $5,000
	Exceeding one million dollars	Issuance of not convertible virtual assets through exchanges	$3,500
	Exceeding one million dollars	Issuance of not convertible virtual assets directly to the public	$5,000
	Exceeding one million dollars	Issuance of convertible virtual assets	$5,000 - $10,000
VASP providing virtual asset services not including issuance services	Generated revenue not exceeding five hundred thousand dollars	Virtual asset services offered to persons within the islands	$1,000 - $1,500
	Generated revenue not exceeding five hundred thousand dollars	Virtual asset services offered to persons outside of the islands	$2,500 - $5,000
	Generated revenue exceeding five hundred thousand dollars	Virtual asset services offered to persons within the islands	$3,500 - $5000
	Generated revenue exceeding five hundred thousand dollars	Virtual asset services offered to persons outside of the islands	$7,500 - $15,000

What are the main ongoing requirements for VASPs regulated in the Cayman Islands?

VASPs registered in the Cayman Islands are subject to the certain ongoing obligations under the VASP Act including, amongst others, the following:

1. VASPs are required to annually provide for auditor's report at their own expense, prepared by an independent auditor on Anti-money Laundering (**AML**) systems and procedures for compliance with the AMLR;
2. VASPs are required to implement measures to identify and report unusual or suspicious movements of funds, value, or transactions indicative of potential involvement in illicit activity;
3. VASPs shall prepare accounts annually and make it available for inspection upon request by CIMA;
4. senior officers, trustees and beneficial owners should be fit and proper;
5. VASPs shall take necessary steps to protect and secure personal data and virtual assets of the clients;
6. VASPs shall ensure communications relating to virtual assets service are clean;
7. VASPs shall ensure compliance with AMLR and other laws relating to the combating of money laundering, terrorist financing (**TF**) and proliferation financing (**PF**) and shall put in force AML systems and procedures along with an officer with responsibility for the same;
8. VASPs shall be ready to provide any document, statements or such other information required by the CIMA to perform its functions;

9. VASPs shall pay renewal fee on or before 15th January of every year for renewal of their license or registration; and

directors, senior officers and other relevant persons of VASPs must continue to comply and satisfy with the "fit and proper" criteria.

What are the main restrictions on VASPs in the Cayman Islands?

The Cayman Islands imposes various restrictions on entities involved in virtual asset services to ensure compliance with international standards and prevent illicit activities. Any VASP that wishes to conduct its business in or from within the Cayman Islands would require to be registered or licensed under the VASP Act. Additionally, SIBA regulates entities engaged in securities investment business, relevant business activities include dealing, arranging, managing, or advising on digital assets where they meet the definition of "securities" under the SIBA. VASPs are restricted from issuing virtual asset which have the inherent characteristics of securities without prior licensing or waiver. Any VASP issuing securities must have a license under the SIBA framework or obtain a waiver from CIMA to engage in such activities.

Further, a VASP is prohibited from providing financing to clients for virtual asset purchases without adequate disclosures on terms and risks. Additionally, engaging in trading or market making for the licensee's own account is restricted unless necessary for platform operation and disclosed to clients. The platform must ensure that virtual assets traded are not presented deceptively, and clients are only allowed to trade after being made aware of associated risks through comprehensible disclosures. Furthermore, providing fiat-to-fiat exchange services to platform users is not permitted. These regulations aim to foster transparency, client protection, and the integrity of virtual asset trading within the jurisdiction.

What are the main information that VASPs have to make available to its customers?

A VASP providing virtual asset custody services are required to disclose any information concerning transparency of operation which includes risks associated with the custodial arrangements, internal safeguards, method of access to virtual assets and insurance agreements. They further require a custodial arrangement providing information about the manner in which virtual assets will be held, the nature and manner of transactions that the custodian is permitted to engage in, disclosures relating to risk in safekeeping and mitigating factors, fees and spreads or other remuneration to the custodian, information about how clients can access their access the virtual asset, grounds on which the agreement can be terminated, matters relating to licensees security safeguards, remedies available to owner upon any unforeseeable loss of virtual asset by custodian.

A VASP providing the services of trading platform must make disclosures to customers concerning the transparency of operations of the virtual asset trading platform including disclosures to client on custodial arrangements and insurance against theft or loss of assets.

What market misconduct legislation/regulations apply to virtual assets?

A brief overview of the various market misconduct provisions in Cayman Islands legislation that may apply to virtual assets is set out below:

1. *VASP Act*: provides for relevant rules and requirements concerning conduct of VASPs registered in the Cayman Islands and includes various offences including, amongst others, carrying out virtual asset services without licensing;
2. *SIBA*: provides for requirements for licensing of entities engaged in investment services in the Cayman Islands and includes various offences including, amongst others, carrying out investment services without licensing; and
3. *AML/TF / PF Regulations*: VASPs are required to comply with AMLR and the POCA to ensure adherence to ML/TF/PF regulations and ensure reporting of any illicit activity that comes under their notice promptly to CIMA;
4. *Economic Substance Requirements*: The ITCESA provides for VASPs to mandates that all Cayman Islands entities, including foreign entities registered in the Cayman Islands, must submit an annual notification to the Cayman Islands Tax Information Authority (**TIA**). It should be noted that economic substance does not include investment funds.

4. Regulation of other crypto-related activities in the Cayman Islands

Are managers of crypto funds regulated in the Cayman Islands?

The managers of crypto funds or the act of managing crypto funds in or from within, in the context of Cayman Islands regulation, investment funds focused on virtual assets that do not issue tokenized equity interests are likely to be regulated under the Private Funds Act or the Mutual Funds Act depending on the characteristics of the fund. Pending guidance from the CIMA, funds intending to issue tokenized equity interests may engage in virtual asset issuance, qualifying as a VASP activity, requiring licensing or registration with CIMA before launch. Funds considering virtual asset subscriptions or redemptions in-kind should seek advice on their regulatory status. Regarding offerings within the Cayman Islands, exemptions prohibit certain companies from offering securities to the public, and caution is advised to avoid activities constituting "carrying on a business" within the Cayman Islands, necessitating legal guidance. While these restrictions typically do not pose significant concerns, careful consideration of exempt entities and target investors is recommended. That said, if a crypto fund has the characteristics of securities, the managers would require to either get a license or registration from CIMA or apply for waiver of such requirements under CIMA.

Are distributors of virtual asset funds regulated in the Cayman Islands?

Distributors of virtual asset funds, or the act of distributing virtual assets fund in the context of Cayman Islands regulation, will fall in the category of private sale or public sale of virtual assets. In a private sale, virtual asset distribution is meticulously orchestrated through a controlled and exclusive process. The issuer, through private agreements, selectively chooses a limited number of individuals or entities, ensuring that the sale remains confidential and not publicly advertised. Participation is by invitation or within a closed network, allowing for a targeted and confidential distribution to a pre-approved audience. Notably, participants in a private sale benefit from an exemption from registering with the CIMA.

Conversely, in a public sale, the distribution of virtual assets is open to a broader audience, with information disseminated through diverse channels such as online platforms and social media. This inclusive process enables interested individuals to participate without the need for pre-selection or private agreements, aiming to attract a diverse range of participants. Public sales are typically advertised widely to reach a broader market and generate interest from potential investors. Due to the larger and potentially riskier pool of participants involved, issuers are obligated to register with the CIMA to ensure compliance with regulatory measures.

That said, investment funds focused on virtual assets that do not issue tokenized equity interests are likely to be regulated under the Private Funds Act or the Mutual Funds Act.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in the Cayman Islands?

The provision of trading services in virtual assets is explicitly listed as one of the services falling under virtual asset services, and entities intending to engage in such activities are obligated to obtain licensing as a Virtual Asset Trading Platform (**VATP**) under the VASP Act. Entities or intermediaries desiring to provide trading services are required to submit an application for a virtual asset service license using the prescribed form. For a comprehensive understanding of the registration prerequisites, please refer to the relevant sections outlined above.

VASP Act does not include advising clients on virtual assets as one of the services under the definition of virtual asset services. However SIBA amendments 2020 expanded the definition of securities to include virtual assets which can be immediately sold, traded or exchanged with underlying characteristics of securities or derivatives as provided in schedule 1 of SIBA. Entities engaged in advising on virtual assets that qualify as securities are now subject to registration or licensing under the SIBA.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in the Cayman Islands?

No.

Has there been any notable events in the Cayman Islands that has prompted regulatory change recently?

No.

6. Pending litigation and judgments related to virtual assets in the Cayman Islands (if any)

There are no notable judgments or any pending litigation in the jurisdiction.

7. Government outlook on virtual assets and crypto-related activities in the Cayman Islands

The Cayman Islands legal system is rooted in English Common Law which provides stability. The jurisdiction's significant financial and tax incentives for businesses, including the absence of local corporate, income, sales, or capital gains taxes. It is a leading International Financial Center with a stable, pro-business regulatory environment, meeting high anti-money laundering compliance standards. The Cayman Islands provide proximity to the U.S. and global markets, enabling businesses to leverage opportunities and operate within a diverse global team. Foreign ownership is allowed, with no earning criteria, and businesses benefit from world-class infrastructure, including cutting-edge IT, reliable telecommunications, and data centers etc.

8. Advantages of setting up a VASP in the Cayman Islands

Financial & Tax Incentives:

Tax Environment: The Cayman Islands offer an advantageous tax environment for businesses. There are no local corporate, income, sales, or capital gains taxes, providing a competitive edge in the global market. This allows CEOs and their businesses to operate without the burden of various taxation, fostering a financially favorable climate.

International Financial Center: The Cayman Islands hold the distinction of being one of the world's leading International Financial Centers. It serves as the top hedge fund jurisdiction globally, attracting financial institutions and businesses seeking a robust and reputable financial ecosystem.

Stable, Pro-Business Regulatory Environment:

Compliance and Stability: Cayman complies with the highest anti-money laundering standards, ensuring a secure financial environment. As a British Overseas Territory, it enjoys stability both politically and economically. The legal system, rooted in English Common Law, provides a solid foundation for businesses seeking regulatory clarity.

Intellectual Property Protection: The jurisdiction boasts comprehensive legislation surrounding intellectual property, assuring businesses that their assets are well-protected. This legal framework enhances confidence in establishing and operating businesses in the Cayman Islands.

Concessions for Cayman Enterprise City: Businesses establishing themselves through Cayman Enterprise City receive concessions, streamlining the set-up process. This initiative aims to make it quick, easy, and cost-effective for global businesses to operate within the jurisdiction.

Proximity to U.S and Global Markets:

Geographical Advantage: The Cayman Islands' strategic location, just an hour away from the U.S. by plane, offers businesses unique advantages. This proximity facilitates efficient engagement with U.S. opportunities, allowing companies to work within a diverse global team while benefiting from the stability and protections of UK laws.

Foreign Ownership and No Earning Criteria:

Global Corporate Citizen Program: Those officially designated as corporate personnel in the Cayman Enterprise City can participate in the Global Corporate Citizen Program. This program allows for 100% foreign ownership, enabling businesses to operate globally using a Zone Trade Certificate.

Flexibility in Staffing: The absence of earning criteria means that businesses, including C-suite executives, can operate without specific financial benchmarks, providing flexibility in staffing and operations.

World-Class Infrastructure:

Cutting-Edge IT and Infrastructure: The Cayman Islands lead in terms of infrastructure in the Caribbean. Special Economic Zones (SEZs) offer cutting-edge IT infrastructure for businesses to leverage. This includes offshore hosting, payment gateways, high-speed Internet, reliable cell service, and two Tier-3 data centers.

February 2024

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Grenada

1. Virtual asset laws and regulations in Grenada

In 2018, Grenada began exploring digital versions of its currency, led by the Eastern Caribbean Central Bank (**ECCB**), focusing on the Eastern Caribbean Dollar. This wasn't directly linked to cryptocurrencies like Bitcoin.

In 2019, the Financial Action Task Force (**FATF**) set guidelines for virtual assets, and Grenada, a member of the Caribbean Financial Action Task Force (**CFATF**), had to comply. Though no specific laws regulated virtual assets initially, the Financial Intelligence Unit (**FIU**) issued warnings about associated risks.

The turning point was the introduction of the **Virtual Asset Business Act, 2021**, establishing a legal framework for virtual asset businesses. It defines terms, sets licensing and registration requirements, and addresses anti-money laundering and counter-terrorism financing. The regulatory body that oversees the Virtual Asset Business Act, 2021 is the Grenada Authority for the Regulation of Financial Institutions (**GARFIN**). GARFIN is responsible for registering and supervising virtual asset businesses, ensuring compliance, and enforcing penalties.

Grenada has shifted from a cautious stance, as indicated by the FIU's advisory, to a regulated environment with the Virtual Asset Business Act, 2021.

What is considered a virtual asset in Grenada?

According to the Virtual Asset Business Act, 2021, *a "virtual asset" refers to a digital representation of value that can be traded or transferred digitally and can be used for payment or investment purposes. It does not include digital representations of fiat currency or securities*.

Furthermore, the Virtual Asset Business Act, 2021 provides examples of virtual assets such as "*digital currencies, digital coins, and digital tokens, among other representations of digital value.*"

What are the relevant laws and regulations?

Grenada has implemented regulations for virtual assets and digital currency businesses, with the passage of the Virtual Asset Business Act in July 2021.

The Act mandates the registration and supervision of virtual asset businesses operating in Grenada, and requires registrants to comply with Anti-Money Laundering and Combating the Financing of Terrorism (**AML/CFT**) regulations and maintain relevant records. It also lays out requirements for the registration process, a code of conduct for registrants, and provisions for penalties and sanctions for non-compliance.

Who do such laws and regulations apply to?

The Virtual Asset Business Act, 2021 applies to businesses operating in or from Grenada that conduct one or more of the following activities involving virtual assets on behalf of another person:

1. Exchange between virtual assets and fiat currencies.
2. Exchange between one or more forms of virtual assets.
3. Transfer of virtual assets.
4. Safekeeping or administration of virtual assets or instruments enabling control over virtual assets.
5. Participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

These activities cover a broad range of virtual asset-related businesses, including cryptocurrency exchanges, virtual asset custodians, and other service providers that facilitate the buying, selling, transferring, or storing of virtual assets. The Act requires these businesses to obtain a license from the FSRC and comply with various regulatory requirements, such as AML/CFT measures and consumer protection provisions.

Who are the relevant regulatory authorities in relation to virtual assets in Grenada?

The GARFIN is the regulatory authority in Grenada in relation to virtual asset businesses. GARFIN is responsible for registering and supervising virtual asset businesses, ensuring compliance with the Virtual Asset Business Act, 2021, and enforcing penalties where necessary. The Act sets out the legal framework and establishes the requirements for virtual asset businesses in Grenada, including AML/CFT regulations.

The Eastern Caribbean Central Bank (**ECCB**) is the monetary authority for Grenada and other Eastern Caribbean countries. In 2021, the ECCB launched a pilot for its Central Bank Digital Currency (**CBDC**) project, known as DCash. DCash is a digital version of the Eastern Caribbean Dollar and is intended to be used alongside physical cash, but it's not related to the regulation of decentralised cryptocurrencies. In summary, GARFIN is the main regulatory authority for virtual asset businesses in Grenada.

What are the penalties for breaches of virtual asset laws and regulations in Grenada?

The Virtual Asset Business Act, 2021 sets out criminal penalties, administrative penalties, and registration revocation or suspension for breaches of virtual asset laws and regulations in Grenada. Here is a summary of the penalties:

Criminal penalties: A person who is convicted on indictment for an offense under the Act is liable to a fine not exceeding $250,000 and to imprisonment for a term not exceeding 7 years. A person who is convicted on summary conviction for an offense under the Act is liable to a fine not exceeding $50,000 and to imprisonment for a term not exceeding 2 years.

Administrative penalties: A registrant who fails to comply with any provision of the Virtual Asset Business Act, 2021 or any request for relevant information by the GARFIN may become liable to pay an administrative penalty set by the respective authority, which is imposed by a notice in writing.

Registration revocation or suspension: If a registrant contravenes a provision of the Virtual Asset Business Act, 2021, makes a false declaration in an application for registration, or is no longer considered a fit and proper person to be a registrant, the GARFIN may revoke or suspend their registration.

2. Regulation of virtual assets and offerings of virtual assets in Grenada

Are virtual assets classified as 'securities' or other regulated financial instruments in Grenada?

The Virtual Asset Business Act, 2021 of Grenada does not explicitly classify virtual assets as 'securities' or other regulated financial instruments. However, it does provide a framework for regulating various activities involving virtual assets, which could indirectly imply their classification based on the specific nature and use of the asset.

The Virtual Asset Business Act, 2021 defines a virtual asset business as an entity that conducts one or more activities or operations for, or on behalf of, another person. These activities include:

(a) Exchange between a virtual asset and fiat currency; (b) Exchange between one or more forms of virtual assets; (c) Transfer of a virtual asset whether or not for value; (d) Safekeeping or administration of a virtual asset or instruments enabling control over a virtual asset; and (e) Participating in and provision of financial services related to an issue or sale of a virtual asset.

Although the Virtual Asset Business Act, 2021 does not provide a clear classification for virtual assets, it is possible that some virtual assets could fall under existing classifications of securities or other financial instruments depending on their characteristics and functions. For instance, if a virtual asset represents an ownership interest in a company or entitles the holder to a share of profits, it might be considered a security.

To determine whether a particular virtual asset would be classified as a security or another regulated financial instrument in Grenada, a case-by-case analysis would be necessary. This would involve examining the specific features and purposes of the virtual asset in question, considering aspects such as its creation, issuance, and intended use.

Are stablecoins and NFTs regulated in Grenada?

The Virtual Assets Business Act 2021 of Grenada does not explicitly mention Non-Fungible Tokens (**NFTs**) or stablecoins. However, its regulatory framework for virtual assets, covering activities like exchange and financial services related to virtual assets, suggests that stablecoins and NFTs may be regulated based on their specific characteristics and use cases. A case-by-case analysis is needed to determine their regulatory status.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Grenada?

The Virtual Asset Business Act, 2021 in Grenada encompasses DeFi activities, such as lending virtual assets, within its regulatory framework. It defines virtual asset business as the conduct of one or more activities or operations for or on behalf of another person, which includes participating in and providing financial services related to an issue or sale of a virtual asset. DeFi activities, such as lending virtual assets, fall within this definition when conducted for or on behalf of another person.

Under the Virtual Asset Business Act, 2021, any person who offers or operates a Virtual Asset Business in or from Grenada is required to be registered, with certain exceptions. This requirement applies to DeFi activities as well, provided they are conducted for or on behalf of another person. Those already operating a virtual asset business are allowed to continue their operations for 60 days from the date of commencement of the Virtual Asset Business Act, 2021, after which they must be registered to continue their activities.

Registrants must maintain adequate accounting records and prepare financial statements for each financial year, keeping these records and statements at their place of business in Grenada. Additionally, registrants must implement and maintain policies to ensure the legitimate collection, storage, use, and disclosure of clients' personal information related to their virtual asset business.

Regarding the prospectus for the issue or sale of virtual assets, registrants must not participate in or provide financial services related to the issue or offer for sale of a virtual asset without submitting a prospectus to the GARFIN for review and receiving a statement of no objection. The prospectus must be prepared in accordance with the requirements set out in Schedule 3 of the Virtual Asset Business Act, 2021 and submitted to the GARFIN for review.

Are there any restrictions on issuing or publicly offering virtual assets in Grenada?

Yes, there are restrictions and requirements on issuing or publicly offering virtual assets in Grenada under the Virtual Asset Business Act, 2021. Here are some of the key points:

1. A registrant shall not participate in or provide financial services related to the issue or offer for sale of a virtual asset without submitting a prospectus to the GARFIN for review at least 14 (fourteen) days before the proposed date of its publication.
2. The prospectus shall be prepared in English and shall include items, such as a background of the registrant and virtual asset business involved, information on the amount and currency of the issue or sale, the payment terms for subscription or purchase, and financial information of the registrant.
3. The GARFIN may order an amendment to a prospectus, suspend an issue or offer for sale where an order for amendment is made subsequent to the provision of a statement of no objection to a prospectus, or suspend or cancel an issue or offer for sale of a virtual asset if in the public interest.
4. Failure to comply with the requirements for a prospectus or contravening any other provision related to the issue or offer for sale of virtual assets may result in penalties, including summary conviction to a fine of $10,000 and imprisonment of 2 years.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in Grenada?

Yes, there are certain exemptions to the restrictions on issuing or publicly offering of virtual assets in Grenada. Here are some key points to keep in mind:

Exemptions to Registration Requirements:

1. *Non-Grenadian Business*: According to Section 4(3) of the Virtual Asset Business Act, 2021, a person who operates a virtual asset business outside of Grenada and only occasionally carries on virtual asset business in or from within Grenada is exempt from the registration requirement, provided that the person is registered or licensed under the laws of a country or territory outside of Grenada.
2. *Financial Institutions*: Section 4(4) of the Virtual Asset Business Act, 2021 states that a financial institution regulated under any other enactment in Grenada is exempt from the registration requirement if it carries on virtual asset business incidental to its business as a financial institution.
3. *Designated Non-Financial Businesses and Professions*: Section 4(5) of the Virtual Asset Business Act, 2021 exempts designated non-financial businesses and professions listed in Part I of Schedule 2 from the registration requirement, provided that they carry on virtual asset business incidental to their main business.

Exemptions to Prospectus Requirements:

Section 13(2) of the Virtual Asset Business Act, 2021 exempts certain virtual asset offerings from the prospectus requirement. These exempt offerings include:

1. Offerings where the total consideration payable for the issue or sale of the virtual assets is less than $500,000.
2. Offerings made to not more than 50 persons in Grenada or elsewhere.
3. Offerings made to professional investors only.

3. Regulation of VASPs in Grenada

Are VASPs operating in Grenada subject to regulation?

The Virtual Asset Business Act, 2021 of Grenada regulates VASPs operating in or from Grenada. It provides the regulatory framework for the registration and supervision of virtual asset business from Grenada and with persons in Grenada.

The Virtual Asset Business Act, 2021 applies to any person who, whether before or after the commencement of the Act, offers or operates virtual asset business in or from Grenada. The Virtual Asset Business Act, 2021 defines a virtual asset as any digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes, but does not include digital representations of fiat currencies or securities.

The Virtual Asset Business Act, 2021 requires any person who wishes to be registered to offer or operate virtual asset business to apply to the GARFIN for registration. The person shall make an application for registration in writing and provide the relevant details. The GARFIN reviews the application and considers whether to grant or refuse registration.

If registration is granted, the registrant must comply with various requirements and obligations, including the appointment and obligations of a principal representative, requirements for a registrant, and obligations to provide adequate accounting records and prepare financial statements, keep assets in escrow, and report quarterly to the GARFIN.

The Virtual Asset Business Act, 2021 also regulates prospectuses for the issue or sale of a virtual asset, including the requirement to submit a prospectus to the GARFIN for review and to publish the prospectus prior to the issue or offer for sale.

The Virtual Asset Business Act, 2021 sets out a wide range of powers for the GARFIN, including the power to examine or cause an examination of a registrant. Failure to comply with the Virtual Asset Business Act, 2021 may result in penalties.

Are VASPs providing virtual asset services from offshore to persons in Grenada subject to regulation in Grenada?

Yes, VASPs providing virtual asset services from offshore to persons in Grenada are subject to regulation under the Virtual Asset Business Act, 2021 in Grenada.

The Virtual Asset Business Act, 2021 applies to any person who offers or operates virtual asset business in or from Grenada, whether before or after the commencement of the Act. Therefore, virtual asset service providers operating from offshore and offering their services to persons in Grenada are required to register with the GARFIN under this Act and comply with all its provisions.

What are the main requirements for obtaining licensing / registration as a VASP in Grenada?

Under the Virtual Asset Business Act, 2021, any person who, whether before or after the commencement of the Act, offers or operates virtual asset business in or from Grenada is required to register with the GARFIN.

To register, a person shall make an application in writing and provide the name and address of the registered office of the person, the address of the place of business in Grenada, a statement setting out the nature and scope of the virtual asset business, including but not limited to the date operations commenced, and the name of the application and website address where the person conducts virtual asset business from or intends to conduct virtual asset business from.

Applicants shall also provide a risk assessment of the products and services to be provided, written policies, rules, and procedures for anti-money laundering and counter-financing terrorism measures, data management and protection, security access control, and cyber-security safeguards. Additionally, they must provide any other information the GARFIN may reasonably require for the purpose of determining the application and whether a person is fit and proper.

A registrant is also required to appoint and have at all times in place a principal representative who is ordinarily resident in Grenada to be accountable for the daily management of the place of business in Grenada, acts as a liaison between clients of the registrant and other offices of the registrant or its affiliates, acts as a liaison between the registrant and the GARFIN on all matters arising in connection with the virtual asset business in Grenada, advises and guides the registrant as to its responsibilities and obligations to ensure compliance with the Virtual Asset Business Act, 2021 and any guidelines or regulations issued under it.

Furthermore, the Virtual Asset Business Act, 2021 requires a registrant to place in escrow, with a registered trust company or with an entity or person whose business is the provision of trust or custodial services, assets to discharge financial obligations to clients of the registrant, subject and on terms to be approved by the GARFIN. Along with the above obligations, VASPs must also pay registration fees prescribed in Schedule 1 and renew the registration annually.

The registration fees prescribed in Schedule 1 of the Act are as follows:

1. Application Fee - $2,500
2. Registration Fee - $10,000
3. Late Fee - $2,500

Fees under the Virtual Asset Business Act, 2021 shall be payable to the Government of Grenada, and proof of payment shall be submitted to the GARFIN.

It's worth noting that a registrant may also be subject to seal up, search, and seizure, prohibition, or restriction from operating a virtual asset business and may also be liable to a penalty of up to $250,000 or imprisonment for up to 10 years.

Finally, the GARFIN may publish on its website or through any other media, a list of all registrants and former registrants, the nature and scope of their virtual asset business, and any other information about the virtual asset business that the GARFIN considers appropriate.

What are the main ongoing requirements for VASPs regulated in Grenada?

The ongoing requirements for VASPs regulated in Grenada are as follows:

1. A registrant must appoint a Principal Representative who is ordinarily resident in Grenada and who will be responsible for the daily management of the place of business in Grenada, act as a liaison between clients of the registrant and other offices of the registrant or its affiliates, other than offices located in, or affiliates incorporated in, Grenada, and act as the liaison between the registrant and the GARFIN.
2. A registrant is required to lodge any software source code and associated materials supporting the virtual asset business with a software escrow agent upon approval of the GARFIN.
3. A registrant shall maintain adequate accounting records and prepare financial statements in respect of each financial year in accordance with generally accepted accounting principles and keep a copy of such accounting records and financial statements at its place of business in Grenada.
4. A registrant is required to lodge assets to discharge financial obligations to clients of the registrant in escrow, with a registered trust company or with an entity or person whose business is the provision of trust or custodial services, and such assets shall be equivalent to 40 percent of the total value of client funds held by the registrant.
5. A registrant needs to write to the GARFIN for approval of any changes in the business of the registrant including:
    - 5.1 names of any director, officer, principal representative or significant shareholder;
    - 5.2 nature and scope of the virtual asset business; and
    - 5.3 address and contact information of the registered office and any other place of business within and outside the jurisdiction of Grenada.
6. A registrant needs to submit quarterly reports providing the number of accounts held by the registrant, the value of the accounts held by the registrant, and a statement of the assets held in escrow.
7. Registrants are required to have written policies, rules, and procedures for AML/CFT measures. Additionally, registrants are required to comply with the requirements of the Proceeds of Crime Act, 2012, and must institute procedures to ensure that accounting records and business operations comply with the Proceeds of Crime Act, 2012.

What are the main restrictions on VASPs in Grenada?

The Virtual Asset Business Act, 2021 of Grenada imposes several restrictions on Virtual Asset Service Providers (**VASPs**) operating in or from Grenada. Here are the main restrictions and obligations:

1. *Registration*: VASPs must register with the GARFIN before offering or operating any virtual asset business in or from Grenada.
2. *Compliance with AML/CFT measures*: VASPs are required to implement and maintain written policies, rules, and procedures for anti-money laundering and counter-financing terrorism measures.
3. *Data management and protection*: VASPs must have policies and procedures in place to ensure the proper management and protection of client data, including measures to prevent unauthorised access, disclosure, or loss.
4. *Security and cybersecurity safeguards*: VASPs must implement appropriate security and cybersecurity measures to protect their systems, networks, and virtual assets from unauthorised access, theft, or manipulation.
5. *Principal representative*: VASPs must appoint a principal representative who is ordinarily resident in Grenada and responsible for managing daily operations, ensuring compliance with the Virtual Asset Business Act, 2021, and acting as a liaison between clients, other offices, and the GARFIN.
6. *Escrow*: VASPs must place assets in escrow with a registered trust company or a custodial service provider to discharge financial obligations to clients, subject to terms approved by the GARFIN.
7. *Enforcement and penalties*: VASPs may be subject to seal up, search, and seizure, prohibition, or restriction from operating a virtual asset business, and may be liable to penalties or imprisonment according to Section 18 of the Virtual Asset Business Act, 2021.

What are the main information that VASPs have to make available to its customers?

The Virtual Asset Business Act, 2021 of Grenada does not explicitly specify the information that Virtual Asset Service Providers (VASPs) must make available to their customers. However, it implies certain requirements and best practices that VASPs should follow to ensure transparency and customer protection. Here are some key pieces of information that VASPs may be expected or encouraged to provide to their customers:

1. *Terms and conditions*: VASPs should provide clear and comprehensive terms and conditions governing the use of their services, including details about fees, transaction limits, and any other relevant policies.
2. *Risk disclosure*: VASPs should inform their customers about the risks associated with virtual assets, such as market volatility, cybersecurity threats, and potential loss of funds.

3. *Privacy policy*: VASPs should disclose their privacy policies, explaining how they collect, use, store, and share customer data, as well as the measures they take to protect customer information.
4. *AML CFT policies*: VASPs should inform customers about their AML/CFT policies, including customer due diligence requirements, transaction monitoring, and suspicious activity reporting.
5. *Fees and charges*: VASPs should clearly disclose all fees and charges associated with their services, such as trading fees, deposit and withdrawal fees, and any other applicable charges.
6. *Dispute resolution*: VASPs should provide customers with information about their dispute resolution process, including how to file a complaint and the steps involved in resolving disputes.
7. *Contact information*: VASPs should provide customers with their contact information, including their registered office address, telephone number, email address, and any other relevant communication channels.
8. *Service availability*: VASPs should inform customers about their operating hours, any scheduled maintenance or downtime, and the availability of customer support.
9. *Escrow arrangements*: VASPs should disclose information about their escrow arrangements, including the terms and conditions under which customer assets are held in escrow and the registered trust company or custodial service provider used for this purpose.

What market misconduct legislation/regulations apply to virtual assets?

The Virtual Asset Business Act, 2021 of Grenada does not explicitly address market misconduct related to virtual assets. However, it does establish certain requirements for VASPs that can help prevent market misconduct and promote market integrity. Some of these requirements include:

1. *Prospectus Review and Approval*: VASPs must not participate in or provide financial services related to the issue or offer for sale of a virtual asset without submitting a prospectus to the GARFIN for review at least 14 days before the proposed date of its publication.
2. *Clear Communication*: VASPs must ensure that all information regarding their virtual asset business operations is communicated in a complete, accurate, and comprehensible manner to enable clients to evaluate the features, costs, and risks of the virtual asset business.
3. *Escrow Requirements*: VASPs must place assets equivalent to 40% of the total value of client funds held by the VASP in escrow with a registered trust company or an entity whose business is the provision of trust or custodial services to guarantee the discharge of financial obligations to clients.

4. *Registration Suspension and Revocation*: The GARFIN maintains registers of registrants whose registrations have been suspended or revoked. VASPs with revoked registrations cannot participate in or provide financial services related to virtual asset business.
5. *Registration Requirement*: Participating in or offering virtual asset business in or from Grenada without being registered under the Virtual Asset Business Act, 2021 is considered an offense.
6. *AML/CFT Compliance*: VASPs are required to implement and maintain AML/CFT measures, including customer due diligence, ongoing monitoring, and suspicious transaction reporting, in accordance with Grenada's AML/CFT regulations.

4. Regulation of other crypto-related activities in Grenada

Are managers of crypto funds regulated in Grenada?

Yes, managers of crypto funds in Grenada are regulated. The Virtual Asset Business Act, 2021 applies to any person who offers or operates virtual asset business from Grenada or with persons in Grenada. A virtual asset business includes operating a virtual asset fund, virtual asset custody service, virtual asset wallet service, or any other virtual asset service prescribed. Therefore, managers of crypto funds fall under the scope of the Virtual Asset Business Act, 2021 and are required to register with the GARFIN. Registrants are required to provide information including the name and address of the directors, beneficial owners, and significant shareholders, as well as written policies and procedures for AML/CFT measures.

In addition to registration, the Virtual Asset Business Act, 2021 prescribes certain obligations for registrants, including the requirement to have a principal representative who is ordinarily resident in Grenada and responsible for the daily management of the place of business in Grenada. Furthermore, registrants are required to implement and maintain policies for the virtual asset business to ensure compliance with AML/CFT measures, as well as data management and protection, security access control, and cyber-security safeguards

Are distributors of virtual asset funds regulated in Grenada?

Yes, distributors of virtual asset funds are regulated in Grenada by the Virtual Asset Business Act, 2021, which applies to any person offering or operating virtual asset business from Grenada or with persons in Grenada.

Distributors of virtual asset funds are required to register with the GARFIN, and comply with the requirements of the Virtual Asset Business Act, 2021, which includes submitting quarterly reports, maintaining adequate accounting records and financial statements, and complying with anti-money laundering and counter-financing terrorism measures. Additionally, the Virtual Asset Business Act, 2021 regulates the issuing and sale of virtual assets, including the submission and review of a prospectus.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Grenada?

Yes, there are requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Grenada under the Virtual Asset Business Act, 2021. These requirements include:

1. any person offering virtual asset-related services in Grenada, such as intermediaries, must register with the GARFIN;
2. intermediaries must provide information on their directors, beneficial owners, and significant shareholders;
3. intermediaries must maintain adequate accounting records and financial statements;
4. intermediaries must implement policies, rules, and procedures that comply with AML/CFT measures, as well as cybersecurity safeguards;
5. intermediaries must submit quarterly reports providing information such as the number and value of accounts held and a statement of assets held in an escrow;
6. intermediaries must place assets in escrow with a registered trust company or entity providing trust or custodial services. The amount held in escrow must be equivalent to 40% of total client funds; and
7. a prospectus must be submitted and reviewed by the GARFIN before virtual assets can be issued or offered for sale.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in Grenada?

The Virtual Asset Business Act, 2021, which regulates virtual asset business in Grenada, was passed in July 2021. At this time, there do not appear to be any upcoming regulatory developments specifically related to crypto-related activity in Grenada. However, the Virtual Asset Business Act, 2021 gives the GARFIN the power to issue guidelines and the Minister the power to make regulations related to virtual asset business, so it is possible that new regulations or guidelines regarding crypto-related activity could be introduced in the future.

Has there been any notable events in Grenada that has prompted regulatory change recently?

There is no widely reported event in Grenada that has specifically prompted recent regulatory changes related to virtual assets or cryptocurrencies. The introduction of the Virtual Asset Business Act, 2021, which is the primary legislation governing VASPs and related activities in Grenada, appears to be part of an approach by the Grenadian government to establish a regulatory framework for the virtual asset industry.

6. Pending litigation and judgments related to virtual assets in Grenada (if any)

There are currently no pending litigations or judgments in Grenada.

7. Government outlook on virtual assets and crypto-related activities in Grenada

The passing of the Virtual Asset Business Act, 2021 in July 2021 suggests that the Grenadian government is taking steps to regulate the virtual asset industry and establish a legal framework for virtual asset businesses. It is possible that the government may issue guidelines or make further regulations related to crypto-related activity in the future.

The Virtual Asset Business Act, 2021 aims to ensure that VASPs adhere to certain standards, including AML/CFT measures, consumer protection, and market integrity requirements. By establishing a clear regulatory framework, the Grenadian government seeks to promote a secure environment for virtual asset businesses.

8. Advantages of setting up a VASP in Grenada

Setting up a VASP in Grenada offers several potential advantages:

1. *Clear regulatory framework*: The Virtual Asset Business Act, 2021, provides a well-defined legal environment for VASPs, ensuring regulatory clarity and confidence in operations.
2. *Citizenship by Investment (CBI) program*: Grenada's CBI program allows foreign investors to obtain Grenadian citizenship by making a significant investment, which can be attractive for VASP founders or investors.
3. *Strategic location*: Grenada's position in the Eastern Caribbean offers access to both North American and Latin American markets, benefiting businesses looking to expand in these regions.
4. *English-speaking jurisdiction*: Operating in an English-speaking country simplifies communication and understanding of the legal and regulatory environment for businesses setting up a VASP in Grenada.
5. *Fiscal incentives*: Grenada offers various fiscal incentives for businesses, which could potentially benefit VASPs, although not specifically targeted at them.

March 2024

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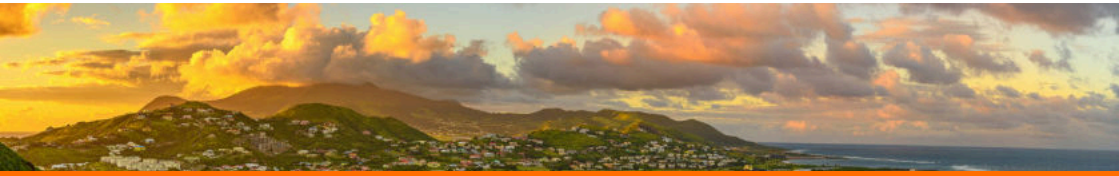

St. Kitts & Nevis

1. Virtual asset laws and regulations in St. Kitts & Nevis

St. Kitts and Nevis has established a comprehensive legal framework to regulate virtual assets, ensuring alignment with international standards and promoting financial stability. The foundational Virtual Asset Act, 2020 (Act No. 1 of 2020) outlines the requirements for registration, compliance, and supervision of virtual asset service providers.

This act was further amended by the Virtual Assets (Amendment) Act, 2021 (Act No. 8 of 2021), which incorporated additional provisions to strengthen regulatory oversight and ensure compliance with international obligations related to anti-money laundering and counter-terrorism financing.

Further amendments include the Virtual Asset (Amendment of Schedule) Order, 2021 (SRO No. 47 of 2021), detailing specific requirements and procedures for virtual asset service providers, and the Virtual Asset (Forms) Regulations, 2022 (SRO No. 25 of 2022), prescribing necessary forms and documentation for applications, registrations, and compliance reporting.

In May 2024, the Virtual Asset (Amendment) Bill, 2024 was circulated in parliament still to be passed as a valid legislation, which will align the Virtual Asset Act with the latest Financial Action Task Force (**FATF**) standards, reinforcing the country's commitment to combating money laundering and terrorist financing.

These legislations read together and shall be referred to as St. Kitts and Nevis Virtual Assets Act for consistency and better understanding.

What is considered a virtual asset in St. Kitts & Nevis?

In St. Kitts and Nevis, a "virtual asset" is defined as “a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes and

does not include digital representations of fiat currency or security" and encompasses various forms of digital assets, including cryptocurrencies like Bitcoin and Ethereum, as well as other digital tokens that hold value and are utilized in financial transactions. The Virtual Assets Act, No. 1 of 2020, regulates activities involving virtual assets.

This definition suggests that stablecoins, which are typically pegged to a fiat currency but traded digitally, might fall under the Act's scope if they are used for investment or payment purposes. NFTs, on the other hand, might be considered virtual assets if they have value and are transferable, though their unique and indivisible nature might place them in a gray area under this law. The entities seeking clarification shall approach the St. Kitts and Nevis FSRC, as the extent of regulation and reporting requirements are specific to the facts and the characteristics of specific non fungible token in question, as the case may be.

Who do such laws and regulations apply to?

The virtual asset laws and regulation applies to any person who whether before or after the commencement of St. Kitts and Nevis Virtual Assets Act, whoever offers or operates virtual asset business to residents of Saint Christopher and Nevis or from Saint Christopher and Nevis, therefore any business conducted having characteristics of virtual assets in their business transactions or underlying business model.

Under the Act, "virtual asset business" means the conduct of one or more of the following activities or operations for or on behalf of another person:

1. exchange between a virtual asset and fiat currency;
2. exchange between one or more forms of virtual assets;
3. transfer of a virtual asset whether or not for value;
4. safekeeping or administration of a virtual asset or instruments enabling control over a virtual asset;
5. participation in financial services related to a virtual asset issuer's offerings; participation in and provision of financial services related to an issue or sale of a virtual asset.

"virtual asset service provider" means a person authorized to carry on virtual asset business. An entity once recognized and registered by the FSRC in the jurisdiction.

Who are the relevant regulatory authorities in relation to virtual assets in St. Kitts & Nevis?

Before the registration and licensing of the Virtual asset business and service providers in the St. Kitts and Nevis, Financial Services Regulatory Commission is the point of contact for all entities seeking to get a financial services company registered in the jurisdiction. Once registered in the authority the entity is required to keep a good conduct, and the following authorities are having oversight over the entity and acts as primary authority for licensing, oversight, compliance, and enforcement of virtual asset service providers and their conduct and activities.

Financial Intelligence Unit (**FIU**), Monitors for AML/CFT compliance, collaborates with FSRC to detect suspicious transactions, and ensures virtual assets meet financial crime prevention standards.

Eastern Caribbean Central Bank (**ECCB**), Provides macroeconomic guidance, indirectly impacting virtual asset policies, and collaborates on issues affecting regional financial stability.

Tax Authority (Inland Revenue Department), Ensures tax compliance, collects taxes on virtual asset transactions, and provides guidance to VASPs on tax obligations and reporting.

What are the penalties for breaches of virtual asset laws and regulations in St. Kitts & Nevis?

In St. Kitts and Nevis, Virtual Assets Act, along with its amendments, outlines penalties for non-compliance with its provisions. Offenses include operating without proper registration, providing false information, and non-compliance with required reporting and operational standards. Penalties range from fines to imprisonment, designed to enforce adherence to virtual asset regulations and protect the integrity of the financial ecosystem. Below is a detailed table of the offenses, applicable sections, definitions, and penalties (specified in Eastern Caribbean Dollars, XCD, unless otherwise indicated).

Section	Offense	Definition	Penalty
16(1)(a)	False or Misleading Declaration	Making a false or misleading statement to gain or retain clients.	Fine up to XCD $100,000, imprisonment up to 5 years, or both.
16(1)(b)	False Information in Registration	Making a false statement in a registration application.	Fine up to XCD $100,000, imprisonment up to 5 years, or both.
16(1)(c)	Operating Without Registration	Conducting virtual asset business without being registered under the Act.	Fine up to XCD $100,000, imprisonment up to 5 years, or both.
16(2)	General Breach of Act Provisions	Breaching any provision of the Act not otherwise specified with a penalty.	Fine up to XCD $50,000, imprisonment up to 2 years, or both.
9A(6)	Failure to Comply with Escrow or Reporting Requirements	Not maintaining escrow for client funds or submitting quarterly reports as required.	Administrative penalty of XCD $5,000.
13(6)	Non-compliance with Information Requests	Failing to provide requested information to the Authority.	Administrative penalty up to XCD $10,000, plus XCD $200 per day for ongoing non-compliance.
15	Suspension or Revocation Due to Breach	Continuing operations despite revocation or suspension of registration.	Registration may be suspended or revoked by the Authority if in breach of Act provisions.
14(5)	Late Payment of Registration Renewal	Failure to renew registration by January 31 incurs daily late fees.	Late fee of XCD $100 per day after January 31 until renewal, up to a maximum of three months.

There are different fines and penalties outlined in the St. Kitts and Nevis Virtual Assets Act. A person who operates a virtual asset business without being registered or who fails to comply with a requirement imposed by subsection (2) or subsection (3) of section 4 shall be liable to an administrative penalty of $5000. Where a registrant fails to comply with the provisions of subsection (1) or subsection (3) of section 12A, the registrant commits an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand dollars. A person who contravenes the provisions of subsection (1) of section 13 shall be liable to an administrative penalty not exceeding ten thousand dollars ($10,000.00) and to a

further penalty of two hundred dollars for each day that the contravention remains outstanding.

2. Regulation of virtual assets and offerings of virtual assets in St. Kitts & Nevis

Are virtual assets classified as 'investments' or other regulated financial instruments in St. Kitts & Nevis?

In the Federation of Saint Kitts and Nevis, virtual assets are not classified as 'investments' or other regulated financial instruments under traditional financial legislation. Instead, they are governed by the St. Kitts and Nevis Virtual Assets Act, which provides the regulatory framework for virtual asset businesses. This Saint Kitts and Nevis Virtual Asset Act defines a virtual asset as "a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes and does not include digital representations of fiat currency or security" in Section 2 of the St. Kitts and Nevis Virtual Assets Act. While virtual assets can serve investment purposes, they are regulated separately from conventional financial instruments. In 2021, St. Kitts and Nevis Virtual Assets Act introduced amendment inserting Section 3A, stating that "a virtual asset is a regulated business for the purposes of the Proceeds of Crime Act."

In Saint Kitts and Nevis, financial investments and virtual assets fall under distinct regulatory frameworks tailored to their unique characteristics, purposes, and associated risks. Financial investments are typically governed by the St. Kitts and Nevis Securities Act, which includes traditional financial instruments such as stocks, bonds, and mutual funds. These instruments represent ownership stakes, debt obligations, or structured assets tied to physical entities, with an emphasis on protecting investors, ensuring fair trading, and maintaining financial market stability. Virtual assets, by contrast, are regulated by the St. Kitts and Nevis Virtual Assets Act, and its amendments, which define a virtual asset as a digital representation of value that may be traded or used for payment or investment purposes. Importantly, virtual assets do not encompass digital representations of fiat currency or securities, separating them from conventional financial instruments and their regulatory treatment.

The regulatory approach for financial investments in Saint Kitts and Nevis is primarily focused on investor protection, market transparency, and systemic financial stability. Regulations are designed to protect investors through disclosure requirements, regular audits, and other mechanisms that enhance market fairness. Virtual assets, however, are addressed differently; they are seen as a regulated business under the Saint Kitts and Nevis Proceeds of Crime Act which aligns them with anti-money laundering and counter-terrorism financing standards.

Financial investments generally represent ownership or debt obligations linked to tangible entities, which come with investor rights and obligations, while virtual assets do not provide ownership claims or financial obligations on traditional companies. Instead, virtual assets function as digital value tokens, traded on blockchain platforms and without intrinsic backing. This fundamental difference informs the regulatory approach, as financial

investments are more heavily reliant on transparency and market stability, while virtual assets require unique safeguards, particularly around data security and fraud prevention.

Due to the volatility and novel risks associated with virtual assets, service providers are required to implement robust cybersecurity and data protection systems to protect client information and assets. Financial investments, by contrast, are typically underpinned by long-established protections, including disclosure standards and reporting requirements aimed at safeguarding investor interests. The Saint Kitts and Nevis Financial Authority considers systemic risks when regulating these assets. Traditional financial investments are monitored for their potential to impact market stability, while virtual assets, often volatile and decentralized, are managed with a view toward protecting consumers from excessive risk exposure rather than maintaining market equilibrium.

Under the Saint Kitts and Nevis Virtual Assets Act, virtual asset businesses must conduct comprehensive risk assessments, appoint compliance officers, and report suspicious transactions. This level of scrutiny is more intensive compared to financial investments, which also face AML and CTF measures but are centered on transparency and financial reporting rather than the anonymity and cross-jurisdictional aspects inherent in virtual asset transactions.

Are stablecoins and NFTs regulated in St. Kitts & Nevis?

In Saint Kitts and Nevis, both stablecoins and non-fungible tokens are regulated under the country's virtual asset legislation. The Saint Kitts and Nevis Virtual Asset Act, defines a virtual asset as "a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes and does not include digital representations of fiat currency or security." This broad definition encompasses various digital assets, including stablecoins and NFTs.

Stablecoins are digital assets designed to maintain a stable value by being pegged to a reserve of assets, often fiat currencies. Under the Saint Kitts and Nevis Virtual Asset Act, stablecoins are considered virtual assets and are subject to the same regulatory requirements as other digital assets. This includes obligations related to anti-money laundering and counter-terrorism financing measures, as well as registration and compliance standards set forth by the Financial Services Regulatory Commission.

Non-Fungible Tokens are unique digital assets that represent ownership of a specific item or piece of content, such as art, music, or virtual real estate. Given their digital nature and the ability to be traded or transferred, NFTs fall under the definition of virtual assets in the Saint Kitts and Nevis Virtual Asset Act. Consequently, entities dealing with NFTs must adhere to the regulatory framework established for virtual assets, including registration with the FSRC and compliance with Saint Kitts and Nevis AML and CTF regulations.

It's important to note that while the Saint Kitts and Nevis Virtual Asset Act provides a general framework for regulating digital assets, specific guidelines or amendments may further clarify the treatment of various virtual assets, including stablecoins and NFTs. Entities engaging in activities involving these assets should consult the FSRC and stay informed about any updates to the regulatory framework to ensure full compliance.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in St. Kitts & Nevis?

In Saint Kitts and Nevis, decentralised finance (**DeFi**) activities, such as the lending of virtual assets, fall within a regulated framework primarily governed by the Saint Kitts and Nevis Virtual Asset Act, and further amended by the Saint Kitts and Nevis *Virtual Assets Amendments in 2021, 2022 and 2024*. The Saint Kitts and Nevis Virtual Asset Act provides the essential regulatory infrastructure for entities engaging in virtual asset businesses within the jurisdiction, which includes activities that are traditionally associated with DeFi, including the exchange, transfer, and custody of virtual assets.

Under Section 2 of the Saint Kitts and Nevis Virtual Asset Act, the term "virtual asset business" is broadly defined to encompass "the conduct of one or more of the following activities or operations for or on behalf of another person," including the "exchange between one or more forms of virtual assets," the "transfer of a virtual asset whether or not for value," and the "provision of financial services related to an issue or sale of a virtual asset." This provision includes activities central to DeFi platforms, such as the lending or borrowing of digital assets, where virtual assets are transferred between parties either as collateral or as part of a lending arrangement.

DeFi activities, which often involve the transfer and management of substantial digital asset volumes, are subject to anti-money laundering and counter-terrorism financing obligations. Entity engaged in DeFi lending, as well as associated financial activities, is required to implement measures to detect, report, and prevent money laundering and the financing of terrorism. These obligations mandate comprehensive record-keeping, transactional transparency, and due diligence processes for users engaging with DeFi platforms, ensuring the oversight of both local and cross-border transactions.

An illustrative example of how these regulations affect DeFi lending is the application of the registration requirements in Section 4 of the Saint Kitts and Nevis Virtual Asset Act, which stipulates that any entity offering virtual asset business in or from Saint Kitts and Nevis must be registered with the Financial Services Regulatory Commission. In practical terms, a DeFi platform intending to provide virtual asset lending services to users in Saint Kitts and Nevis must apply for registration, submit detailed disclosures regarding its operations, and comply with stipulated financial and operational safeguards, as outlined in Section 6. This application process includes the provision of information on corporate structure, cybersecurity measures, and anti-money laundering policies, all of which are prerequisites for entities engaged in virtual asset services.

Section 9A, added by the Saint Kitts and Nevis Virtual Assets Act imposes fiduciary duties on registered entities that engage in virtual asset business. A DeFi platform operating in Saint Kitts and Nevis would therefore be required to place in escrow, with a registered trust company, assets that represent at least fifteen per cent of the total value of client funds held by the platform. This regulation is aimed at safeguarding client funds against insolvency risks that could arise from fluctuations in virtual asset values, which are inherent to DeFi lending arrangements where digital assets serve as collateral. This fiduciary requirement

underscores the Act's emphasis on consumer protection and financial stability within the virtual asset landscape.

Section 10 of the Saint Kitts and Nevis Virtual Asset Act prescribes that any entity involved in the issuance or sale of virtual assets must submit a prospectus to the FSRC. While this may traditionally apply to initial coin offerings or token sales, it has implications for DeFi platforms issuing governance tokens or other digital instruments to users as part of their lending protocol. By ensuring that clients have access to detailed information about the virtual asset's structure, risks, and the issuer's financial status, this provision helps protect potential lenders or borrowers who might participate in DeFi platforms from risks associated with asymmetric information or fraudulent practices.

Are there any restrictions on issuing or publicly offering virtual assets in St. Kitts & Nevis?

In the jurisdiction of Saint Kitts and Nevis, the issuance and public offering of virtual assets are regulated under the provisions of the Saint Kitts and Nevis Virtual Asset Act, alongside its subsequent amendments. The regulatory requirements set forth in this the Saint Kitts and Nevis Virtual Asset Act aim to uphold transparency, protect prospective investors, and maintain the stability and integrity of the financial system. One of the foremost regulatory requirements for entities wishing to issue or publicly offer virtual assets is the submission and approval of a prospectus. According to Section 10 of the Saint Kitts and Nevis Virtual Asset Act, any registrant engaging in the issuance or offering of virtual assets must submit a prospectus to the Financial Services Regulatory Commission at least fourteen days prior to its intended publication. This prospectus must be prepared in accordance with the detailed guidelines outlined in Schedule 3 of the Saint Kitts and Nevis Virtual Asset Act, which specifies the inclusion of essential information about the registrant, the nature and functionality of the virtual asset, financial projections, and an assessment of risks. The approval of this document by the FSRC is mandatory before any public issuance or sale of virtual assets can proceed.

Once submitted, the FSRC undertakes a thorough review of the prospectus to ascertain that it meets the Saint Kitts and Nevis Virtual Asset Act's stringent standards. Should the FSRC identify any gaps or insufficiencies in the information provided, it possesses the authority under Section 11 to request amendments to the prospectus, including additional disclosures it may consider necessary to protect prospective investors. Furthermore, the FSRC retains the right to suspend or cancel the issuance or offering of a virtual asset if such action is deemed in the public interest. This power serves as a safeguard against any potential misrepresentation or risks posed to investors and ensures that public offerings in the virtual asset space align with the principles of fairness and transparency.

In addition, the Saint Kitts and Nevis Virtual Asset Act imposes strict liability on registrants for any misrepresentation or inaccurate information contained within the prospectus. Section 10(7) grants any individual who relied upon misleading information in the prospectus the right to withdraw from their purchase or subscription and, if they have suffered a loss, the ability to seek compensation. This aspect of the regulation reflects the

legislative intent to protect investors and underscores the importance of accuracy and candour in the disclosures made by entities involved in virtual asset offerings.

The prospectus requirements and associated powers of the FSRC illustrate the regulatory framework's dual focus on both facilitating virtual asset innovation and safeguarding investors. For instance, a virtual asset service provider intending to issue tokens representing a digital asset must ensure that its prospectus includes comprehensive information on the asset's nature, risks, projected value, and the registrant's financial status. By doing so, the FSRC seeks to mitigate the risks often associated with virtual assets, such as price volatility and cybersecurity vulnerabilities, while providing potential investors with the information necessary to make informed decisions.

In conclusion, while the issuance and public offering of virtual assets are permissible under the law in Saint Kitts and Nevis, they are subject to rigorous oversight and compliance obligations under the Saint Kitts and Nevis Virtual Asset Act. The registration requirements, prospectus submission, approval process, and strict liability for misrepresentation collectively serve to protect investors, ensure transparency, and uphold the integrity of the virtual asset market. Entities engaged in such activities must closely adhere to these regulatory obligations and remain vigilant to any updates or amendments, ensuring compliance and alignment with the financial regulatory standards enforced by the FSRC in Saint Kitts and Nevis.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in St. Kitts & Nevis?

In Saint Kitts and Nevis, the Virtual Asset Act, establishes the requirements governing the issuance and public offering of virtual assets to ensure transparency, investor protection, and market integrity. While the Saint Kitts and Nevis Virtual Asset Act sets out comprehensive restrictions and requirements, certain provisions within the legislation afford the Financial Services Regulatory Commission discretionary powers to allow exemptions from these restrictions under specific circumstances. Such exemptions are primarily designed to balance regulatory control with the need to facilitate market development and innovation within the virtual asset space.

Section 11 of the Saint Kitts and Nevis Virtual Asset Act explicitly grants the FSRC authority to exempt certain information from a prospectus where the disclosure of this information may be deemed contrary to the public interest or prejudicial to the registrant. If the FSRC determines that the inclusion of particular information in a prospectus would unfairly harm the commercial interests of the issuer, it may waive the requirement to include that information, provided this exemption does not mislead or negatively impact the public's ability to assess the registrant's or virtual asset's financial standing and prospects. This provision reflects a nuanced approach, enabling the FSRC to tailor its requirements to the unique circumstances of each virtual asset offering, thereby avoiding unnecessary restrictions while upholding investor protection.

In addition to discretionary exemptions regarding prospectus content, the FSRC also holds the power to modify or suspend the standard issuance requirements if it is satisfied that such actions would not compromise the Act's objectives or investor interests. For example,

in cases where a virtual asset issuer can demonstrate a compelling justification, such as a limited, private issuance intended solely for sophisticated investors or institutional clients who may not require the same level of regulatory oversight, the FSRC may consider exemptions from specific disclosure or procedural requirements. Such exemptions, however, would likely be accompanied by conditions or limitations to ensure that the issuance remains confined to qualified parties and does not expose the general public to undue risk.

As detailed in Section 11(2)(c), the FSRC is empowered to suspend or cancel an issue or offer for sale of a virtual asset if required to protect public interests. This measure implies that while exemptions may be granted, they are simultaneously subject to revocation if the FSRC perceives that continued issuance may harm market integrity or investor confidence.

Schedule 3 of the Saint Kitts and Nevis Virtual Asset Act outlines specific conditions under which a prospectus may be structured differently, allowing the FSRC latitude in determining the extent of information required based on the nature of the virtual asset offering. For instance, where a virtual asset is issued as part of a pilot programme or as an experimental financial product aimed at market testing, the FSRC may adjust the prospectus requirements to accommodate the unique aspects of such issuances, provided adequate safeguards are in place to protect participants. This flexibility within the prospectus requirements demonstrates the FSRC's commitment to fostering innovation in the virtual asset sector, while ensuring that investors are sufficiently informed of associated risks.

Saint Kitts and Nevis Virtual Asset Act, establishes a robust regulatory framework for the issuance and public offering of virtual assets in Saint Kitts and Nevis, it also grants the FSRC discretion to offer exemptions where justifiable. This discretion enables the Commission to consider the unique characteristics of individual issuances, thereby allowing flexibility where strict adherence to the Saint Kitts and Nevis Virtual Asset Act may be overly burdensome or unnecessary, provided that investor protection and market stability are not compromised.

3. Regulation of VASPs in St. Kitts & Nevis

Are VASPs operating in St. Kitts & Nevis subject to regulation?

In Saint Kitts and Nevis, Virtual Asset Service Providers are subject to comprehensive regulation under the Saint Kitts and Nevis Virtual Asset Act, and its subsequent amendments. This legislative framework mandates that any entity engaging in virtual asset business within or from the jurisdiction must register with the Financial Services Regulatory Commission. The Saint Kitts and Nevis Virtual Asset Act defines virtual asset business to include activities such as the exchange, transfer, or provision of financial services related to virtual assets. Registered VASPs are required to comply with stringent anti-money laundering and counter-terrorism financing obligations, implement robust internal controls, and adhere to reporting requirements to ensure transparency and the integrity of financial operations. Non-compliance with these regulations can result in penalties, including fines and revocation of registration.

Are VASPs providing virtual asset services from offshore to persons in St. Kitts & Nevis subject to regulation in St. Kitts & Nevis?

Yes, in Saint Kitts and Nevis, the regulatory framework governing virtual asset service providers is primarily established by the Saint Kitts and Nevis Virtual Asset Act, and its subsequent amendments. This legislation mandates that any entity conducting virtual asset business "in or from" the jurisdiction must register with the Financial Services Regulatory Commission and comply with the Act's provisions.

The Saint Kitts and Nevis Virtual Asset Act defines "virtual asset business" to include activities such as the exchange, transfer, or provision of financial services related to virtual assets. However, the Saint Kitts and Nevis Virtual Asset Act does not explicitly address the regulation of VASPs that are domiciled offshore but provide services to individuals or entities within Saint Kitts and Nevis. This omission suggests that the primary regulatory focus is on entities operating within the jurisdiction or those conducting business from it.

Given this context, offshore VASPs offering services to residents of Saint Kitts and Nevis are not explicitly required by the Saint Kitts and Nevis Virtual Asset Act to register with the FSRC or adhere to its stipulations. Nonetheless, such providers should remain cognisant of international regulatory standards and best practices, particularly concerning anti-money laundering and counter-terrorism financing measures. Engaging with local legal counsel is advisable to ensure compliance with any applicable laws and to navigate the complexities of cross-border virtual asset services.

What are the main requirements for obtaining licensing / registration as a VASP in St. Kitts & Nevis?

In Saint Kitts and Nevis, Virtual Asset Service Providers seeking to obtain a license or registration must adhere to the requirements outlined in the Saint Kitts and Nevis Virtual Asset Act and its subsequent amendments. This regulatory framework, administered by the Financial Services Regulatory Commission, establishes rigorous standards to ensure that VASPs operate with transparency, stability, and integrity within the jurisdiction. Prospective VASPs are required to follow an application process detailed in Section 6 of the Act, which includes providing comprehensive documentation and evidence to substantiate the entity's ability to conduct virtual asset business responsibly.

A central requirement for obtaining registration as a VASP involves submitting an application on a prescribed form, which mandates extensive disclosure about the applicant's operations, corporate structure, and key personnel. The information required includes the name and address of the applicant, a statement detailing the scope and nature of the virtual asset business, the business's location, website address, and the jurisdictions in which it operates. Additionally, the application must include the names and addresses of the entity's directors, significant shareholders, and any beneficial owners. The Saint Kitts and Nevis Virtual Asset Act places particular emphasis on transparency regarding management and ownership, thus seeking to ensure that only reputable and fit entities are licensed to operate within the sector. This requirement is specifically designed to enable the

FSRC to assess whether the individuals and entities involved have the requisite qualifications, integrity, and experience to responsibly manage a virtual asset business.

Section 7 of the Saint Kitts and Nevis Virtual Asset Act mandates that the FSRC evaluate each application based on the applicant's "fit and proper" status. This evaluation is thorough and includes assessments of the financial status and solvency of the applicant, the qualifications and experience of its management, and the integrity of its significant shareholders and beneficial owners. The FSRC is tasked with ensuring that applicants have a history of responsible conduct in business and financial dealings, as well as a commitment to ethical practices. For instance, any involvement in past fraudulent activities or breaches of financial regulations would adversely affect an applicant's prospects for registration. This stringent vetting process reflects the jurisdiction's commitment to safeguarding its virtual asset market from entities that might pose risks to investors or the broader financial system.

The FSRC also requires applicants to demonstrate compliance with robust anti-money laundering and counter-terrorism financing obligations. Section 9A of the Saint Kitts and Nevis Virtual Asset Act stipulates that VASPs must institute comprehensive AML and CTF policies, appoint a compliance officer, and submit a risk assessment to the FSRC. This risk assessment must identify the potential vulnerabilities associated with the applicant's operations, including client profiles, transaction types, and geographic exposure. By mandating these AML and CTF controls, the FSRC ensures that licensed VASPs have the infrastructure necessary to detect and prevent financial crimes, thereby upholding both local and international standards in combating illicit financial activities within the virtual asset sector.

In addition to the internal compliance requirements, applicants must satisfy the financial and operational standards stipulated in the Act. As per Section 9A, entities are required to maintain an escrow account with a minimum amount equivalent to fifteen per cent of their total client holdings. This escrow requirement acts as a safeguard, ensuring that VASPs have sufficient reserves to cover potential client obligations and mitigate risks associated with the high volatility of virtual asset markets. Moreover, VASPs must submit quarterly reports on client account values, further enhancing transparency and providing the FSRC with oversight into the operational health of these entities. The necessity for an escrow account, alongside regular reporting, underscores the regulatory emphasis on financial prudence and customer protection.

The application must be accompanied by the prescribed application fee, as outlined in Schedule 1 of the Saint Kitts and Nevis Virtual Asset Act. Upon receiving an application, the FSRC will conduct a thorough review and may request additional information to aid in its determination. If the FSRC is satisfied with the application and the applicant's compliance with all statutory requirements, it will grant registration, allowing the VASP to operate for one year, renewable upon fulfilling the annual registration fee and associated conditions. This renewable registration model ensures ongoing regulatory oversight, allowing the FSRC to monitor the entity's compliance and operational stability on a continuous basis.

According to SRO 47 of 2021, under Schedule 1 of the Virtual Asset Act, the fees to be charged are as follows:

Application Fee: $54,000.00

Registration Fee: $135,000.00

What are the main ongoing requirements for VASPs regulated in St. Kitts & Nevis?

As per Section 9 of the Saint Kitts and Nevis Virtual Asset Act, the Authority requires registrants to retain assets in Saint Christopher and Nevis to discharge financial obligations to clients of the registrant equivalent to the obligations of the registrant. Registrants MUST also provide the Authority notice of any change in their business and implement and maintain measures to prevent money laundering and terrorist financing affecting their business operations. Additionally, registrants must set up procedures to ensure that accounting records and business operations systems are compliant with the Financial Services Regulatory Commission Act.

In Saint Kitts and Nevis, Virtual Asset Service Providers have ongoing responsibilities designed to keep their operations safe, transparent, and in line with regulatory expectations. These requirements, set out in the Saint Kitts and Nevis Virtual Asset Act, and updated by subsequent amendments, ensure that VASPs run in a way that protects customers and supports the credibility of the virtual asset market in the country.

A core part of operating as a VASP is following anti-money laundering and counter-terrorism financing rules. These regulations mean that VASPs must check the identities of their clients, keep a lookout for suspicious transactions, and report any concerns to the authorities. By keeping tight controls on the funds that move through their platforms, VASPs help to prevent illegal activities like money laundering. With the Virtual Asset (Amendment) Act, 2021 tying these services to the Proceeds of Crime Act, Saint Kitts and Nevis sets high standards that these digital services must meet to reduce risks to the financial system.

In addition to meeting compliance standards, VASPs are required to keep financial reserves that can back up their clients' funds. According to Section 9A of the amended Act, VASPs must place a portion of client funds—at least fifteen per cent—into an escrow account with a trusted third party. This measure ensures that, even in volatile times, VASPs have sufficient funds on hand to meet client demands. It's a safeguard for customers, adding an extra layer of protection in case there's a sudden need for withdrawals or other financial obligations.

VASPs are also required to report regularly to the Financial Services Regulatory Commission. Every three months, they must provide a report that includes the number of accounts they manage, the value of those accounts, and details of the funds held in escrow. This quarterly reporting requirement ensures the FSRC has a clear view of each VASP's financial health and how well it is managing client funds. For clients and the regulatory body alike, this transparency helps build trust and holds VASPs accountable for their ongoing financial stability.

Another essential role within every VASP is that of the compliance officer, a person who is responsible for making sure the company follows all relevant laws and regulations. The officer acts as a bridge between the VASP and the FSRC, overseeing day-to-day compliance, tracking risks, and making sure reports are filed accurately and on time. They also ensure that the company's internal policies stay up-to-date with any new regulatory requirements, helping to maintain a compliant and trustworthy operation.

As the business of virtual assets is inherently digital, cybersecurity measures are critical for VASPs. Although the Saint Kitts and Nevis Virtual Asset Act doesn't lay out specific cybersecurity protocols, it's clear that VASPs are expected to protect client information and digital wallets against cyber threats. By securing their platforms from potential breaches, VASPs not only protect their customers but also the integrity of their own operations, as clients need to feel safe when trusting their assets to these platforms.

Each VASP must renew its registration with the FSRC annually. This process involves paying a renewal fee and proving that the company remains in good standing and compliant with regulatory expectations. This yearly review is a checkpoint, allowing the FSRC to make sure that every licensed VASP remains a reliable and responsible participant in the market. Should a VASP fail to renew its registration or meet any of these ongoing requirements, it risks suspension or even the loss of its license.

Together, these ongoing requirements create a secure environment for VASPs to operate in Saint Kitts and Nevis. The regulations don't just protect the companies themselves; they help build a market where customers feel safe and can trust that their assets are managed responsibly. For the virtual asset industry in Saint Kitts and Nevis, these standards ensure stability and maintain the trust of clients, investors, and regulatory authorities alike.

Category	Requirement	Description
Compliance and Risk Management	Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) Compliance	VASPs must conduct thorough customer due diligence, monitor for suspicious transactions, and report any unusual activity to authorities, preventing illicit use of the platform.
Compliance and Risk Management	Appointment of Compliance Officer	Each VASP must appoint a compliance officer who oversees regulatory adherence, manages internal controls, and ensures accurate reporting to regulatory bodies.
Financial Security	Financial Reserves in Escrow	VASPs are required to hold an escrow account containing at least fifteen per cent of client funds to ensure liquidity and meet financial obligations, especially in volatile markets.
Reporting and Transparency	Quarterly Reporting to the FSRC	VASPs must submit quarterly reports to the FSRC, detailing account numbers, asset values, and escrow holdings to ensure financial health and transparency.
Reporting and Transparency	Annual Renewal of Registration	VASPs are required to renew their registration annually by paying a renewal fee and confirming compliance with regulatory standards, maintaining FSRC accountability.
Operational Integrity	Cybersecurity Measures	VASPs must implement strong cybersecurity protocols to safeguard client data, secure digital wallets, and prevent cyber threats, ensuring a secure environment.

What are the main restrictions on VASPs in St. Kitts & Nevis?

In Saint Kitts and Nevis, Virtual Asset Service Providers are subject to a comprehensive regulatory framework designed to ensure the integrity of the financial system and protect consumers. The primary legislation governing VASPs is the Saint Kitts and Nevis Virtual Asset Act, No. 1 of 2020, along with its subsequent amendments. This Saint Kitts and Nevis Virtual

Asset Act outlines several key restrictions and obligations that VASPs must adhere to in order to operate within the jurisdiction.

Mandatory Registration and Licensing

VASPs are required to register with the Financial Services Regulatory Commission before commencing operations. Operating without proper registration is prohibited and may result in legal penalties. The registration process involves a thorough assessment of the applicant's business model, financial stability, and the fitness and propriety of its directors and significant shareholders.

Compliance with Anti-Money Laundering and Counter-Terrorism Financing Regulations

VASPs must implement robust AML and CTF policies to prevent their platforms from being used for illicit activities. This includes conducting customer due diligence, monitoring transactions for suspicious activities, and reporting any such activities to the relevant authorities. The Saint Kitts and Nevis Virtual Asset Act, emphasises that virtual assets are considered regulated businesses for the purposes of the Proceeds of Crime Act, thereby subjecting VASPs to stringent AML and CTF obligations.

Maintenance of Financial Reserves

To safeguard client interests, VASPs are required to maintain financial reserves equivalent to a specified percentage of their obligations to clients. Section 9A of the Virtual Asset (Amendment) Act, 2021 stipulates that VASPs are required to place in escrow, with a registered trust company, assets representing at least fifteen percent of the total value of client funds held. This measure ensures that VASPs have sufficient liquidity to meet their financial commitments to clients.

Quarterly Reporting Obligations

VASPs are obligated to submit quarterly reports to the FSRC. These reports must include the number of accounts held, the value of these accounts, and a statement of assets held in escrow. This requirement, outlined in Section 9A of the Virtual Asset (Amendment) Act, 2021, facilitates ongoing regulatory oversight and ensures that VASPs maintain transparency in their operations.

Appointment of Compliance Officers

VASPs must appoint qualified compliance officers responsible for ensuring adherence to all regulatory requirements, including AML and CTF obligations. The compliance officer plays a crucial role in implementing internal controls, conducting risk assessments, and serving as a liaison with regulatory authorities. This appointment is a key component of the internal governance structure mandated by the regulatory framework.

Adherence to Cybersecurity Standards

Given the digital nature of virtual assets, VASPs are required to implement cybersecurity measures to protect against data breaches and cyber threats. This includes securing client data, safeguarding digital wallets, and ensuring the integrity of transaction processes. While specific cybersecurity requirements are not detailed in the Act, adherence to best practices in cybersecurity is implied as part of the overall obligation to protect client interests.

Restrictions on Issuance and Public Offering of Virtual Assets

VASPs are prohibited from issuing or offering virtual assets to the public without prior approval from the FSRC. This includes the requirement to submit a detailed prospectus outlining the nature of the virtual asset, the terms of the offering, and any associated risks. The FSRC has the authority to approve, reject, or require modifications to the prospectus to ensure that potential investors are adequately informed and protected.

VASPs in St. Kitts & Nevis are subject to several restrictions under the Saint Kitts and Nevis Virtual Asset Act. These include the following:

Category	Restriction	Description
Registration Requirement	Mandatory Licensing and Registration	VASPs must register with the Financial Services Regulatory Commission (FSRC) before starting operations. Operating without proper registration is prohibited and may lead to penalties.
Compliance Obligations	Anti-Money Laundering (**AML**) and Counter-Terrorism Financing (**CTF**) Compliance	VASPs are required to implement AML and CTF policies, including customer due diligence, transaction monitoring, and reporting any suspicious activity to the authorities.
Financial Security	Maintenance of Financial Reserves	VASPs must keep at least fifteen percent of client funds in escrow to ensure sufficient liquidity to meet financial obligations. This reserve must be held with a registered trust company.
Transparency Requirements	Quarterly Reporting Obligations	VASPs are required to submit quarterly reports to the FSRC, detailing account values, escrow holdings, and operational health. This reporting ensures ongoing regulatory oversight.
Internal Governance	Appointment of Compliance Officers	VASPs must appoint a compliance officer responsible for regulatory adherence, internal controls, and communication with regulatory authorities. This officer is key to ensuring compliance.
Cybersecurity Standards	Adherence to Cybersecurity Best Practices	VASPs are expected to implement strong cybersecurity protocols to protect client data, digital wallets, and transaction integrity. Cybersecurity best practices are necessary to protect against breaches.
Issuance Restrictions	Restrictions on Issuance and Public Offering of Virtual Assets	VASPs are prohibited from issuing or publicly offering virtual assets without FSRC approval. A detailed prospectus must be submitted, outlining the asset's nature, terms, and risks, to protect investors.

What are the main information that VASPs have to make available to its customers?

In Saint Kitts and Nevis, Virtual Asset Service Providers are required to present a range of essential information to their customers to ensure transparency and to allow customers to make informed decisions regarding their engagement with virtual asset services. These requirements are outlined in the Saint Kitts and Nevis Virtual Asset Act, and reinforced by its amendments, reflecting the jurisdiction's commitment to consumer protection and market integrity.

VASPs are mandated to disclose comprehensive details about their regulatory status, including confirmation of their registration and licensing with the Financial Services Regulatory Commission. Customers must have access to clear information regarding the legitimacy and legal oversight of the VASP, including the entity's regulatory obligations and compliance status. This disclosure serves as a reassurance that the VASP is operating within the established legal framework and is subject to the Commission's standards and enforcement actions. Furthermore, VASPs are expected to provide accessible contact information, including physical office addresses and customer service contacts, so that

customers can effectively communicate with the entity. This aspect of disclosure reinforces transparency and builds trust between the customer and the service provider.

In addition to regulatory details, VASPs are required to offer clear information about the services they provide, including specific descriptions of the types of virtual asset services offered, such as trading, custody, or exchange services, as stipulated under Section 9 of the Saint Kitts and Nevis Virtual Asset Act. Each service must be described in full, with any limitations or specific conditions clearly articulated. Customers are also entitled to a transparent breakdown of all fees associated with the services rendered. Whether these involve transaction fees, withdrawal charges, or other operational costs, this fee structure must be communicated to ensure customers are fully aware of any financial obligations they may incur by using the services.

VASPs must also provide risk disclosures that inform customers of the potential risks associated with engaging in virtual asset transactions. The inherently volatile nature of virtual asset markets, characterised by rapid price fluctuations and high-risk exposure, necessitates a clear communication of these risks to the customer. This ensures that individuals are aware of the possibility of substantial financial losses. Moreover, the regulatory risks associated with virtual assets must also be disclosed, particularly regarding any uncertainties or legal restrictions that may arise in certain jurisdictions where the virtual assets or services may be subject to varying degrees of regulation. This disclosure is intended to inform customers of potential challenges and regulatory limitations, thereby allowing them to make prudent financial decisions.

The protection of customer data and assets is a crucial area of responsibility for VASPs, and they are obliged to disclose the measures implemented to secure both data and funds. In terms of data protection, VASPs must provide information on how customer data is collected, managed, and stored, including adherence to data protection standards and regulations. Furthermore, VASPs must communicate the security measures employed to safeguard client assets, which may include the use of cold storage for digital assets, multi-signature wallets, and insurance arrangements. By detailing these security protocols, VASPs demonstrate their commitment to the protection of customer funds against cyber threats and operational risks, providing customers with a sense of security and confidence in the entity's ability to protect their assets.

VASPs must further ensure that customers have access to comprehensive terms and conditions governing their use of the services. These terms outline the respective rights and obligations of both the VASP and the customer, covering crucial aspects such as transaction terms, service limitations, and customer responsibilities. Additionally, VASPs are required to provide clear privacy policies detailing the practices concerning the collection, use, and sharing of customer information. These documents form the basis of the legal agreement between the VASP and the customer and are essential in ensuring that customers are fully informed of the contractual terms before engaging with the services.

VASPs are required to maintain accessible and reliable customer support to address client inquiries, complaints, and service-related issues. Information on available support channels, including the expected response times and support hours, must be provided. Furthermore, VASPs should outline the process for handling complaints, providing customers with a clear

pathway for addressing any grievances. This commitment to customer support enhances the overall customer experience and reinforces the VASP's dedication to upholding a high standard of service.

What market misconduct legislation/regulations apply to virtual assets?

A brief overview of the various market misconduct provisions in BVI legislation that may apply to virtual assets is set out below:

1. *Virtual Asset Act*: Requires all VASPs to obtain licensing from the Financial Services Regulatory Commission before offering virtual asset services and mandates disclosure of business activities, information on directors and beneficial owners, and adherence to anti-money laundering protocols.
2. *Securities Act*: Provides guidelines for certain financial activities that may not require specific licensing under the VASP Act. Relevant for VASPs involved in securities-related transactions that are indirectly linked to virtual assets, ensuring broader compliance with financial industry standards.
3. *AML / TF / PF regulations*: Requires VASPs to conduct customer due diligence, report suspicious activities, and maintain transaction records to prevent the misuse of virtual assets in terrorism financing and proliferation. Aligns with international standards, including the Financial Action Task Force recommendations, through Saint Kitts and Nevis' membership in the Caribbean Financial Action Task Force;
4. *Economic Substance requirements*: Applicable to VASPs as part of requirements for conducting relevant business activities in Saint Kitts and Nevis. Ensures that entities have substantial local presence, including office, employees, and management activities, supporting compliance with OECD tax transparency standards;
5. *FATF*: As a member of the Caribbean Financial Action Task Force, a regional body affiliated with the Financial Action Task Force, the Federation aligns its regulatory practices with FATF recommendations. The FATF's guidance on virtual assets and VASPs outlines measures to mitigate risks associated with virtual assets, including customer due diligence, record-keeping, and reporting of suspicious transactions. In its "Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers" (October 2021), the FATF outlines measures to prevent misuse of virtual assets for illicit activities;
6. *FATCA*: Saint Kitts and Nevis has entered into an Intergovernmental Agreement with the United States to implement the Foreign Account Tax Compliance Act. This agreement, signed on August 31, 2015, facilitates compliance by financial institutions within the Federation with FATCA's reporting requirements. Under this framework, financial institutions, including VASPs, are required to report information on accounts held by U.S. taxpayers to the Inland Revenue Department, which then transmits the information to the U.S. Internal Revenue Service.

4. Regulation of other crypto-related activities in St. Kitts & Nevis

Are managers of crypto funds regulated in St. Kitts & Nevis?

In Saint Kitts and Nevis, managers of cryptocurrency funds are subject to regulatory oversight to ensure the integrity of the financial system and to protect investors. The primary legislation governing such activities is the Saint Kitts and Nevis Virtual Asset Act, which establishes a framework for the regulation of virtual asset service providers. Under this Act, any entity engaging in virtual asset business activities, including the management of crypto funds, is required to register with the Financial Services Regulatory Commission before commencing operations.

The Saint Kitts and Nevis Virtual Asset Act defines virtual asset business to include activities such as the exchange between virtual assets and fiat currencies, the transfer of virtual assets, and the provision of financial services related to virtual assets. Therefore, managers of crypto funds, who are involved in the administration and investment of virtual assets on behalf of clients, fall within the scope of this legislation. Compliance with the Saint Kitts and Nevis Virtual Asset Act necessitates adherence to anti-money laundering and counter-terrorism financing regulations, conducting customer due diligence, and implementing robust internal controls to mitigate financial crime risks.

The Saint Kitts and Nevis Securities Act may apply to managers of crypto funds, particularly if the funds are structured in a manner that involves securities or investment contracts. Saint Kitts and Nevis Securities Act provides a regulatory framework for entities conducting securities business, which includes fund management activities. Under Saint Kitts and Nevis Securities Act, fund managers are required to obtain the appropriate licenses and adhere to regulations concerning investor protection, disclosure requirements, and fiduciary duties.

Saint Kitts and Nevis is committed to international standards set by the Financial Action Task Force and is a member of the Caribbean Financial Action Task Force. This commitment entails that managers of crypto funds must implement measures to prevent money laundering and terrorist financing, including reporting suspicious transactions and maintaining comprehensive records.

Are distributors of virtual asset funds regulated in St. Kitts & Nevis?

In Saint Kitts and Nevis, the distribution of virtual asset funds is subject to regulatory oversight to ensure the integrity of the financial system and to protect investors. The primary legislation governing such activities is the Saint Kitts and Nevis Virtual Asset Act, which establishes a framework for the regulation of virtual asset service providers. Under the Saint Kitts and Nevis Virtual Asset Act, any entity engaging in virtual asset business activities, including the distribution of virtual asset funds, is required to register with the Financial Services Regulatory Commission before commencing operations.

The Saint Kitts and Nevis Virtual Asset Act defines virtual asset business to include activities such as the exchange between virtual assets and fiat currencies, the transfer of virtual

assets, and the provision of financial services related to virtual assets. Therefore, distributors of virtual asset funds, who are involved in the marketing and sale of virtual asset investment products to clients, fall within the scope of this legislation. Compliance with the Saint Kitts and Nevis Virtual Asset Act necessitates adherence to anti-money laundering and counter-terrorism financing regulations, conducting customer due diligence, and implementing robust internal controls to mitigate financial crime risks.

Saint Kitts and Nevis Securities Act may apply to distributors of virtual asset funds, particularly if the funds are structured in a manner that involves securities or investment contracts. The Saint Kitts and Nevis Securities Act provides a regulatory framework for entities conducting securities business, which includes fund distribution activities. Under the Saint Kitts and Nevis Securities Act, fund distributors are required to obtain the appropriate licenses and adhere to regulations concerning investor protection, disclosure requirements, and fiduciary duties.

Saint Kitts and Nevis is committed to international standards set by the Financial Action Task Force and is a member of the Caribbean Financial Action Task Force which entails that distributors of virtual asset funds must implement measures to prevent money laundering and terrorist financing, including reporting suspicious transactions and maintaining comprehensive records.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in St. Kitts & Nevis?

In Saint Kitts and Nevis, intermediaries aiming to offer trading services in virtual assets or provide advisory services to clients regarding virtual assets are subject to specific regulatory requirements to ensure the integrity of the financial system and to protect investors.

Saint Kitts and Nevis Virtual Asset Act mandates that any entity engaging in virtual asset business activities, including trading and advisory services, must register with the Financial Services Regulatory Commission prior to commencing operations. The Saint Kitts and Nevis Virtual Asset Act defines virtual asset business to encompass activities such as:

1. Exchange between virtual assets and fiat currencies.
2. Exchange between one or more forms of virtual assets.
3. Transfer of virtual assets.
4. Safekeeping or administration of virtual assets or instruments enabling control over virtual assets.
5. Participation in and provision of financial services related to an issuer's offer or sale of a virtual asset.

Therefore, intermediaries providing trading or advisory services fall within the scope of this legislation and are required to comply with its provisions.

To register under the Saint Kitts and Nevis Virtual Asset Act, intermediaries must submit an application to the Saint Kitts and Nevis FSRC, providing detailed information about their

business operations, management structure, and compliance measures. The application process includes:

1. Disclosure of the nature and scope of the virtual asset business.
2. Identification of directors, significant shareholders, and beneficial owners.
3. Implementation of anti-money laundering and counter-terrorism financing protocols.

The FSRC assesses the application to ensure that the intermediary is a fit and proper entity to engage in virtual asset business and that it has adequate systems and controls in place to mitigate financial crime risks.

Registered intermediaries are obligated to adhere to ongoing compliance requirements, including:

1. Conducting customer due diligence to verify the identity of clients and assess the risk of money laundering or terrorist financing.
2. Maintaining accurate records of transactions and client information.
3. Reporting suspicious activities to the relevant authorities.
4. Implementing robust internal controls and risk management frameworks. These obligations are designed to align with international standards, including those set by the Financial Action Task Force, to which Saint Kitts and Nevis is committed.

Saint Kitts and Nevis Securities Act may apply to intermediaries providing advisory services, particularly if the services involve securities or investment contracts. Saint Kitts and Nevis Securities Act provides a regulatory framework for entities conducting securities business, which includes advisory activities. Under Saint Kitts and Nevis Securities Act, intermediaries are required to obtain the appropriate licenses and adhere to regulations concerning investor protection, disclosure requirements, and fiduciary duties.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in St. Kitts & Nevis?

In May 2024, the Virtual Asset (Amendment) Bill, 2024 was introduced to align the Virtual Asset Act with the latest Financial Action Task Force (**FATF**) standards, reinforcing the country's commitment to combating money laundering and terrorist financing. While there have been no official announcements regarding new regulatory developments beyond these amendments, the government's commitment to maintaining a secure and compliant environment for virtual asset activities suggests that further updates may occur as the global cryptocurrency landscape evolves. Stakeholders are advised to stay informed about potential regulatory changes by monitoring official communications from the Financial Services Regulatory Commission and other relevant authorities.

6. Pending litigation and judgments related to virtual assets in St. Kitts & Nevis (if any)

The St. Kitts and Nevis's legal system, grounded in English common law, offers a stable and predictable environment for virtual asset entities. The adherence to established legal principles ensures that businesses can operate with a clear understanding of their rights and obligations, fostering confidence among investors and stakeholders.

The Financial Services Regulatory Commission plays a pivotal role in overseeing financial services, including virtual asset businesses. By implementing comprehensive regulations, the FSRC ensures that virtual asset entities operate within a well-defined legal framework, promoting transparency and accountability. This regulatory clarity is essential for businesses to navigate the complexities of the virtual asset landscape effectively.

The enforcement of laws through a structured judiciary, comprising Magistrate's Courts, the High Court, the Court of Appeal, and the Judicial Committee of the Privy Council, provides mechanism for resolving disputes and upholding legal standards. The commitment to international standards, as evidenced by the passage of the Virtual Assets (Amendment) Bill, 2024, aligns St. Kitts and Nevis with global best practices in financial regulation.

7. Government outlook on virtual assets and crypto-related activities in St. Kitts & Nevis

St. Kitts and Nevis is one of the prominent offshore companies given its tax neutrality, confidentiality of data and information by the government, simple reporting systems, asset protections and limited liability protection.

The main advantages of setting up a VASP in St. Kitts and Nevis are:

1. tax benefits

   St. Kitts and Nevis offers a favorable tax environment for cryptocurrency investors, with no capital gains or income tax on digital assets. However, investors are advised to comply with local regulations, including the Virtual Asset Act, to ensure adherence to anti-money laundering and counter-terrorism financing standards.

2. confidentiality

   The legal framework in St. Kitts and Nevis emphasizes financial privacy. Information about company ownership and directorship is not publicly disclosed, ensuring that sensitive business details remain confidential. This level of privacy is particularly beneficial for VASPs concerned with protecting client information and proprietary business strategies.

3. simplified reporting requirements

   VASPs in St. Kitts and Nevis benefit from streamlined reporting obligations. The regulatory environment is designed to be business-friendly, reducing administrative burdens and compliance costs. This simplicity allows VASPs to focus more on their core operations rather than extensive regulatory reporting.

4. asset protection

   The jurisdiction offers robust asset protection mechanisms. Structures such as Nevis trusts and Limited Liability Companies provide strong defenses against potential legal claims and creditors. These legal entities are designed to safeguard assets, making them attractive options for VASPs aiming to protect their holdings.

5. Digital Currency Initiatives

   St. Kitts and Nevis participates in the Eastern Caribbean Central Bank's digital currency pilot program, known as DCash. Launched in March 2021, DCash is a digital version of the Eastern Caribbean dollar, aiming to provide a secure and efficient digital payment system within the Eastern Caribbean Currency Union.

6. Consideration of Bitcoin Cash as Legal Tender

   In November 2022, Prime Minister Terrance Drew announced the government's intention to explore the adoption of Bitcoin Cash as legal tender by March 2023, contingent upon thorough due diligence and the establishment of necessary financial safeguards.

November 2024

~CQ~

Estonia

1. Virtual asset laws and regulations in Estonia

The regulation of virtual assets in Estonia began to take shape with the amendment of the Money Laundering and Terrorist Financing Prevention Act (**MLTFPA**) in 2019. The amendments introduced virtual currency service providers as obliged entities and defined virtual currency as a digital representation of value that is not issued or guaranteed by a central bank or public authority and is accepted as a means of exchange.

The MLTFPA requires virtual currency service providers to obtain a license from the Estonian Financial Intelligence Unit (**FIU**) and implement anti-money laundering and counter-terrorist financing (**AML/CTF**) measures. These measures include conducting due diligence on customers, monitoring transactions, and reporting suspicious activity to the Estonian FIU. The license process includes registering a headquarters in Estonia, paying a licensing fee, and identifying customers.

In addition to the MLTFPA, Estonia has implemented EU Directive 2015/849, which established a European legal framework for virtual currencies. This directive requires cryptocurrency service providers to have a license and follow AML/CFT rules.

What is considered a virtual asset in Estonia?

In Estonia, a virtual asset is defined as a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency, and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored or traded electronically. This definition is provided under MLTFPA of Estonia, which is the primary law governing virtual assets in the country.

What are the relevant laws and regulations?

1. *MLTFPA*: This is the primary law governing virtual assets in Estonia. The MLTFPA defines virtual currency as a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency, and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored or traded electronically. Virtual currency service providers are required to obtain a license from the Estonian FIU and implement AML/CFT measures.
2. *EU Directive 2015/849*: Estonia has implemented this directive, which establishes a European legal framework for virtual currencies. Cryptocurrency service providers are required to have a license and follow AML/CFT rules.
3. *International Sanctions Act, 2019*: It recognises virtual currency service providers as persons with special obligations to ensure that they are monitoring their transactions for compliance with international sanctions. This can help prevent financial crimes like money laundering and terrorism financing that might be facilitated through the use of virtual assets.

Who do such laws and regulations apply to?

The MLTFPA of Estonia applies to virtual currency service providers based on their actual intention and the nature and purpose of their activity. Virtual currency service providers who "*provide services of exchanging a virtual currency against a fiat currency and vice versa or of exchanging one virtual currency against another virtual currency*" are obliged to register themselves with the Estonian FSA and comply with the AML/CTF measures. The law also includes other entities, such as custodian wallet providers, who provide services for the safeguarding of private cryptographic keys on behalf of their customers or provide private storage media for the storage of cryptographic keys. Such providers must also comply with AML/CTF measures laid down in the MLTFPA, regardless of their place of residence or registration.

Who are the relevant regulatory authorities in relation to virtual assets in Estonia?

In Estonia, the primary regulatory authority responsible for overseeing and supervising virtual currency service providers is the Estonian FIU, which operates under the Police and Border Guard Board. The Estonian FIU is responsible for issuing licenses to virtual currency service providers, monitoring their compliance with AML/CFT regulations, and ensuring that they follow strict know-your-customer (**KYC**) and due diligence procedures.

In addition to the FIU, the Estonian Financial Supervision and Resolution Authority (**FSA**) may also have some indirect involvement in the regulation of virtual assets, particularly when it comes to the licensing and supervision of financial institutions that engage in activities related to virtual assets.

What are the penalties for breaches of virtual asset laws and regulations in Estonia?

In Estonia, penalties for breaches of virtual asset laws and regulations, primarily the MLTFPA, can be both administrative and criminal. The specific penalties imposed depend on the nature and severity of the violation.

Administrative penalties can include:

1. *Fines*: The Estonian FIU can impose fines on virtual currency service providers for non-compliance with AML/CFT regulations, ranging from 320 EUR up to 32,000 EUR for individuals and up to €400,000 for legal entities. In some cases, the Estonian FIU may impose a penalty of up to twice the amount of the benefit derived from the violation.
2. *License suspension or revocation*: The Estonian FIU can suspend or revoke the license of a virtual currency service provider if they fail to comply with the regulatory requirements or pose a threat to public order or national security.

Criminal penalties can include:

1. *Fines*: In case of more severe violations, individuals can face criminal fines of up to 400 fine units (1 fine unit is equal to 4 EUR), and legal entities can face fines of up to 32,000 fine units (128,000 EUR).
2. *Imprisonment*: In the most serious cases, individuals can face imprisonment for up to 5 years for violations related to money laundering, terrorist financing, or other criminal activities involving virtual assets.

2. Regulation of virtual assets and offerings of virtual assets in Estonia

Are virtual assets classified as 'securities' or other regulated financial instruments in Estonia?

In Estonia, virtual assets are not automatically classified as 'securities' or other regulated financial instruments. However, depending on their specific characteristics and use cases, some virtual assets may fall under the definition of a security or another regulated financial instrument as per the Estonian Securities Market Act (**SMA**).

The Estonian FSA is responsible for the supervision of securities and other financial instruments. If a virtual asset meets the criteria of a security or another regulated financial instrument under the SMA, it will be subject to the relevant regulatory requirements, such as prospectus approval, licensing, and disclosure obligations.

Are stablecoins and NFTs regulated in Estonia?

In Estonia, stablecoins and non-fungible tokens (**NFTs**) are not explicitly mentioned in the existing regulations. However, they may fall under the scope of the MLTFPA if they are used as a means of exchange, payment, or investment.

The Estonian FIU is responsible for regulating virtual currency service providers, and the MLTFPA sets out the regulatory requirements for these providers, including anti-money laundering AML/CFT measures.

Whether a stablecoin or an NFT is subject to regulation in Estonia depends on its specific characteristics and use cases. If a stablecoin or an NFT is considered a virtual currency or a digital representation of value under the MLTFPA, it may be subject to the regulatory requirements for virtual currency service providers.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Estonia?

DeFi activities are not specifically regulated under Estonian law. However, if DeFi activities involve the provision of virtual asset services or are carried out by virtual asset service providers, they are subject to the requirements of the MLTFPA.

In practice, this means that DeFi lending service providers, for example, are required to conduct customer due diligence, adopt risk management principles, establish internal policies, and report suspicious transactions. Additionally, depending on the level of their activities, DeFi service providers may also need to seek authorisation from the Estonian Financial Intelligence Unit.

It is worth noting that the Financial Supervision Authority has indicated that it is keeping a close eye on DeFi activities and has emphasised the need for service providers to adhere to the same standards of customer protection and market integrity as traditional financial services providers.

Are there any restrictions on issuing or publicly offering virtual assets in Estonia?

Yes, there are restrictions and requirements for issuing or publicly offering virtual assets in Estonia. Here are some key points to consider:

1. *Licensing*: Any company that wishes to offer virtual assets or provide services related to virtual assets must obtain a license from the Estonian FIU. There are two types of licenses: a Virtual Currency Exchange Service License and a Virtual Currency Wallet Service License.
2. *KYC and AML Compliance*: Licensed entities are required to implement KYC and AML measures. This includes customer identification, due diligence, and transaction monitoring.
3. *Registration of the ICO*: If a company is planning to launch an Initial Coin Offering (ICO), it must register the ICO with the Estonian FIU. The Estonian FIU will then provide a review of the ICO, but this does not constitute an endorsement.
4. *White Paper Requirements*: The company launching the ICO must prepare a white paper that includes detailed information about the project, the virtual token, the issuer, and the rights and obligations attached to the token.
5. *Legal Entity*: The issuer must be a legal entity registered in Estonia.

6. *Capital Requirements*: The issuer must maintain a minimum share capital of 12,000 EUR for a Virtual Currency Exchange Service License and 125,000 EUR for a Virtual Currency Wallet Service License.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in the Estonia?

While the Estonian FIU has a comprehensive regulatory framework for virtual assets, there are some scenarios where certain activities may be exempt from the requirements. Here are a few examples:

1. *Non-economic activity*: If the virtual asset is issued for a non-economic purpose, such as a reward for participating in a volunteer project or for charitable purposes, it may be exempt from some requirements. However, the Estonian FIU must still be notified about the activity.
2. *In-group transactions*: Transactions conducted within a group of companies, where the parent company holds at least 50% of the shares or voting rights in the subsidiary, may be exempt from some requirements.
3. *Occasional transactions*: If a person carries out occasional transactions with virtual assets that do not exceed a certain threshold (1,000 EUR per month), they may be exempt from licensing requirements. However, they must still comply with AML/CFT obligations if their activities trigger those requirements.
4. *Technical maintenance*: Service providers that only offer technical maintenance or support for virtual currency wallets may be exempt from licensing requirements, provided they do not have control over the virtual assets.

3. Regulation of VASPs in Estonia

Are VASPs operating in Estonia subject to regulation?

VASPs are subject to regulation in Estonia, and the Estonian FIU is the primary authority responsible for overseeing and regulating VASPs. To operate legally in Estonia, VASPs must obtain a license from the Estonian FIU and adhere to various regulatory requirements. Here are some elaborations on the regulation of VASPs in Estonia:

1. *Licensing*: VASPs must obtain a Virtual Currency Exchange Service License or a Virtual Currency Wallet Service License, depending on the services they intend to provide.
2. *KYC and AML Compliance*: To prevent money laundering and terrorist financing, licensed VASPs must implement KYC and AML measures, such as customer identification, due diligence, and transaction monitoring. These requirements are set out in MLTFPA.
3. *Regulatory Compliance*: VASPs must comply with various regulatory requirements related to maintaining a local presence, appointing a compliance officer, implementing internal controls, and ensuring the security of customers' virtual assets.

4. *Capital Requirements*: VASPs must maintain a minimum share capital, which varies between Virtual Currency Exchange Service License and Virtual Currency Wallet Service License.
5. *IT Systems*: VASPs must maintain IT systems to ensure the security and integrity of virtual assets and related data. They must also have a business continuity plan to address potential disruptions.
6. *Audit and Reporting*: VASPs are subject to annual audits performed by certified auditors or audit firms, and must submit annual reports on their activities to the Estonian FIU. VASPs must also report any suspicious activities to the Estonian FIU.

Non-compliance with these regulatory requirements can lead to penalties, such as revocation of the license.

Are VASPs providing virtual asset services from offshore to persons in the Estonia subject to regulation in Estonia?

Offshore VASPs offering virtual asset services to individuals in Estonia are subject to regulation under the MLTFPA. It applies when services are provided remotely to persons located in Estonia. Consequently, VASPs serving Estonian residents must comply with the requirements, including registration, licensing, customer due diligence, internal controls, record-keeping, ongoing monitoring, and reporting suspicious transactions to the Estonian FIU.

The Estonian FIU has jurisdiction over VASPs targeting Estonian residents or conducting activities within Estonia. A VASP is considered to provide services in Estonia if it has a permanent establishment, offers services through a local agent or representative, or actively markets its services to Estonian residents. If a VASP falls under any of these categories, it may need to obtain a license from the Estonian FIU.

What are the main requirements for obtaining licensing / registration as a VASP in Estonia?

To obtain a license or registration as a VASP in Estonia, the following main requirements must be met:

1. *Legal Entity*: Establish a legal entity registered in Estonia, either as a private limited company or a public limited company.
2. *Share Capital*: Hold a minimum share capital of 12,000 EUR for a Virtual Currency Exchange Service License and 125,000 EUR for a Virtual Currency Wallet Service License.
3. *AML/CFT Compliance*: Implement effective AML/CFT procedures, including KYC, due diligence, and transaction monitoring processes.
4. *Internal Controls*: Appoint a compliance officer, establish risk management procedures, and implement internal audit mechanisms to ensure compliance with regulatory requirements.

5. *IT Systems*: Ensure IT systems are in place to secure virtual assets, customer data, and transaction records, including appropriate cybersecurity measures and a business continuity plan.
6. *Registered Contact Person*: Appoint a registered contact person responsible for communicating with the Estonian FIU and ensuring compliance with regulatory requirements. The contact person must be a resident of Estonia or have a right of residence in Estonia.
7. *Physical Presence*: Have a physical presence in Estonia, such as a registered office or a place of business.
8. *State Fees*: Pay the required state fees for license application and supervision. As of March 2023, the state fees for license application and supervision in Estonia are as follows:

Virtual Currency Exchange Service License:	
State fee for reviewing the application	3,300 EUR
State fee for supervision (paid annually)	4,800 EUR
Virtual Currency Wallet Service License:	
State fee for reviewing the application	1,300 EUR
State fee for supervision (paid annually)	2,400 EUR

9. *Fit and Proper Test*: Pass the Estonian FIU's assessment of the suitability of the VASP's management board members, shareholders, and beneficial owners.

After meeting all the requirements and submitting a complete application, the FIU will review the application and make a decision within 60 days. If approved, the VASP will receive a license to operate in Estonia. If denied, the VASP can appeal the decision according to Estonian law.

What are the main ongoing requirements for VASPs regulated in Estonia?

VASPs regulated in Estonia must comply with several ongoing requirements to ensure they are following applicable regulations. These requirements include:

1. *Risk-based approach*: Estonian VASPs must adopt a risk-based approach to their AML/CFT compliance efforts. This means that VASPs must have policies and procedures in place that are appropriate to the level of risk that they pose in terms of money laundering and terrorist financing.
2. *Compliance officer*: Appointing a qualified compliance officer to oversee AML and terrorist financing compliance efforts and other responsibilities.
3. *Know-your-customer and customer due diligence*: Identifying and verifying customers, conducting ongoing monitoring of their activities, and ensuring they are not engaging in money laundering or terrorist financing.

4. *Record-keeping*: Maintaining records of transactions and customer information, including identification and verification data, for at least five years.
5. *Reporting*: Promptly reporting any suspicious transactions or information suggesting money laundering or terrorist financing to the Estonian FIU.
6. *Capital requirements*: Complying with prescribed capital requirements to ensure the VASP is sufficiently capitalised to meet its obligations and responsibilities to customers.
7. *Cybersecurity controls*: Implementing cybersecurity measures to protect against cyber threats and safeguard virtual assets, customer data, and transaction records.
8. *Regular audits*: Undergoing regular audits by independent auditors to ensure compliance with applicable regulations and the effectiveness of AML and terrorist financing controls.

In Estonia, the licensing fees for VASPs are structured as follows: For a Virtual Currency Exchange Service License, there is a state fee of 3,300 EUR for reviewing the application, and an annual supervision fee of 4,800 EUR. Meanwhile, for a Virtual Currency Wallet Service License, the state fee for reviewing the application amounts to 1,300 EUR, with an annual supervision fee of 2,400 EUR.

What are the main restrictions on VASPs in Estonia?

The Estonian government imposes various restrictions on VASPs to ensure they operate within the law and do not engage in money laundering, terrorist financing, or other financial crimes. One of the primary restrictions is the requirement to obtain a license from the Estonian FIU, which ensures only legitimate VASPs operate in the country. Licensed VASPs must comply with strict AML/CFT regulations, including strong internal controls and processes to identify, monitor, and report suspicious activities.

Client identification and verification is another aspect of these regulations, ensuring VASPs can verify their clients' identities for AML and CFT purposes. Data management is also essential, with VASPs required to maintain proper records and secure customer data, including identity verification and transaction details. Reporting suspicious transactions and activities to the Estonian FIU is mandatory, as is adherence to capital requirements that ensure VASPs have sufficient financial resources to operate.

Compliance with cybersecurity regulations is another key restriction, protecting customers' personal and financial information from unauthorised access or disclosure. Regular audits, both internal and external, are conducted to ensure VASPs operate in a compliant manner and maintain effective anti-money laundering and counter-terrorist financing controls.

What are the main information that VASPs have to make available to its customers?

In Estonia, VASPs are required to make certain essential information available to their customers to ensure transparency. Some of the main information that VASPs must provide to their customers include:

1. *Company details*: VASPs must provide customers with their full legal name, registration number, and registered address to ensure customers are aware of the entity they are dealing with.
2. *License information*: VASPs must inform customers that they hold a valid license from the Estonian FIU and provide the license number. This helps customers verify the legitimacy of the VASP.
3. *Terms and conditions*: VASPs must provide customers with clear and comprehensive terms and conditions that outline the rights and obligations of both parties, including fees, transaction limits, and dispute resolution procedures.
4. *Privacy policy*: VASPs must provide customers with a privacy policy that explains how their personal data will be collected, stored, processed, and protected in accordance with Estonian data protection laws.
5. *AML/CFT policies*: VASPs must inform customers about their AML/CFT policies, including customer due diligence and verification procedures.
6. *Risk disclosure*: VASPs must provide customers with a clear explanation of the risks associated with virtual assets, including price volatility, cybersecurity threats, and the potential for financial loss.
7. *Customer support*: VASPs must provide customers with contact information for customer support, including email addresses, phone numbers, and support hours, to ensure customers can access assistance when needed.
8. *Complaint resolution*: VASPs must provide customers with information about their complaint resolution process, including how to file a complaint and the timeframe for resolving complaints.

What market misconduct legislation/regulations apply to virtual assets?

In Estonia, the market misconduct legislation and regulations applicable to virtual assets primarily fall under the SMA and the Credit Institutions and Financial Services Act (**CIFSA**). Although virtual assets are not explicitly mentioned in these acts, the Estonian FSA has clarified that certain provisions may apply to virtual assets, depending on their nature and characteristics.

SMA: If a virtual asset is classified as a security token or another type of financial instrument, it will be subject to the SMA. This includes regulations related to insider trading, market manipulation, and disclosure requirements. The SMA also covers the prospectus requirement for public offerings, which may apply to ICOs or security token offerings (**STOs**).

CIFSA: VASPs operating in Estonia must comply with the CIFSA, which regulates financial services and imposes requirements on financial institutions. VASPs must obtain a license from the Estonian Financial FIU to operate legally, and they are subject to AML/CFT regulations.

Criminal Code: Market misconduct, such as insider trading and market manipulation, may also constitute criminal offenses under the Estonian Criminal Code. This applies to virtual assets if they are considered securities or other financial instruments.

Consumer Protection Act: The Consumer Protection Act may apply to virtual assets if they are offered to retail investors. This act requires providers to disclose relevant information to consumers and protects consumers from misleading or deceptive practices.

4. Regulation of other crypto-related activities in Estonia

Are managers of crypto funds regulated in Estonia?

Yes, crypto fund managers are regulated in Estonia. The MLTFPA in Estonia, regulates providers of virtual currency services, which includes crypto fund managers.

According to section 70(1) of the MLTFPA, the activity of managing virtual currencies or tokens, including crypto funds, is considered a provider of virtual currency services. Therefore, entities providing these services, including crypto fund managers, must comply with the requirements of the MLTFPA.

Crypto fund managers must have authorisation from the Estonian FIU, which is responsible for supervising and regulating these activities. They are also required to have internal control measures in place to identify and mitigate the risks of money laundering and terrorist financing. In addition, the crypto fund managers must also submit suspicious transaction reports to the Estonian FIU.

Are distributors of virtual asset funds regulated in Estonia?

In Estonia, distributors of virtual asset funds fall under the regulatory framework set by the MLTFPA. These distributors are considered providers of virtual currency services, which encompasses offering virtual asset funds to the public.

According to Section 70(1) of the MLTFPA, a "provider of virtual currency services" includes:

1. providers offering services for the exchange of virtual currencies against a fiat currency or against other virtual currencies;
2. providers engaged in the transfer of virtual currencies; and
3. providers offering virtual asset services, which includes the offering of virtual asset funds to the public.

As a result, distributors of virtual asset funds are subject to the MLTFPA's requirements. These include:

1. obtaining authorisation from the Estonian FIU before providing services;
2. implementing internal control measures to mitigate the risks of money laundering and terrorist financing;
3. conducting thorough due diligence on customers and monitoring transactions to identify and prevent suspicious activities; and

4. submitting suspicious transaction reports to the Estonian FIU as required.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Estonia?

Intermediaries in Estonia offering services related to virtual currencies, such as exchanging virtual currencies against fiat or other virtual currencies, providing virtual asset services, buying or selling virtual currencies as a service, and trading or advising clients on virtual assets, must adhere to the guidelines set out in the MLTFPA. These intermediaries, classified as providers of virtual currency services, are required to:

1. obtain authorisation from the Estonian FIU before offering services;
2. implement strong internal control measures to mitigate money laundering and terrorist financing risks; and
3. comply with suspicious transaction reporting requirements, submitting reports to the Estonian FIU as necessary.

In addition to the MLTFPA requirements, intermediaries involved in trading virtual assets or providing investment advice may also be subject to other financial regulations, such as those related to securities trading. In this context, intermediaries must follow appropriate AML and KYC regulations to ensure compliance with the MLTFPA.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in Estonia?

The Estonian government's policy on virtual currency regulation will be largely influenced by the implementation of the EU's Markets in Crypto-Assets (**MiCA**) regulation. Under MiCA, crypto-asset service providers (**CASPs**) will be required to obtain authorisation from national competent authorities in order to operate in the EU. This will involve meeting strict regulatory requirements, such as having a sound business plan, implementing effective risk management procedures, and maintaining adequate capital reserves. CASPs will also be subject to ongoing supervision and enforcement actions by national competent authorities to ensure compliance with MiCA's requirements.

In addition, MiCA will introduce new rules for the issuance and trading of crypto-assets, including requirements for disclosure, transparency, and investor protection. Issuers of crypto-assets will be required to publish a white paper containing all relevant information about the offering, including the project's purpose, the rights attached to the crypto-assets, and the use of proceeds. Trading platforms will be required to obtain authorisation and comply with organisational and conduct of business rules, such as conflict of interest policies and best execution requirements.

Has there been any notable events in Estonia that has prompted regulatory change recently?

Yes, there have been some notable events in Estonia that have prompted regulatory change recently, particularly in relation to virtual currency regulation.

1. *Danske Bank Money Laundering Scandal*:

   In 2018, it was revealed that Danske Bank's Estonian branch was involved in one of the largest money laundering scandals in history. The scandal involved the transfer of around 200 billion EUR in suspicious funds through the bank's Estonian branch between 2007 and 2015.

   In response to the scandal, the Estonian government introduced a number of changes to its AML/CTF framework. These changes included strengthening the powers of the Estonian FIU, increasing the penalties for non-compliance, and introducing new regulations for virtual currency service providers. The new regulations for virtual currency service providers came into force in 2020 and require service providers to obtain a license from the Estonian FIU and comply with AML/CTF requirements.

2. *Coin Metro Hacking*:

   In 2019, the Estonian cryptocurrency exchange, Coin Metro, was hacked, resulting in the theft of around 1.7 million EUR in cryptocurrency.

   In response to the hack, the Estonian government introduced new regulations for virtual currency exchanges. The new regulations came into force in 2020 and require virtual currency exchanges to implement stronger security measures, such as two-factor authentication and to comply with AML/CTF requirements.

6. Pending litigation and judgments related to virtual assets in Estonia (if any)

Yes, there have been some pending litigation and decided judgments in Estonia in relation to virtual currency. Here are a few examples:

1. In 2020, the Estonian FIU froze the accounts of a virtual currency exchange, BTC-Alpha OÜ, and its related companies. The Estonian FIU alleged that the companies were involved in money laundering and terrorist financing activities. The case is currently pending in the Estonian courts.
2. *Prosecutor's Office v. K. and T*: In 2019, the Tallinn Circuit Court ruled in this case involving the theft of virtual currency from an Estonian company. The court found that virtual currency is a digital asset that can be the subject of a criminal offense and awarded damages to the victim.
3. *Eesti Pank v. AS LHV Pank*: In 2020, the Estonian Supreme Court ruled in this case involving the taxation of virtual currency transactions. The court found that virtual currency transactions are subject to value-added tax in Estonia, and that the tax should be calculated based on the market value of the virtual currency at the time of the transaction.

7. Government outlook on virtual assets and crypto-related activities in Estonia

The regulation of virtual assets in Estonia began to take shape with the amendment of the MLTFPA in 2019. The Estonian government has introduced new regulations for virtual currency service providers, requiring them to obtain a license from the Estonian FIU and comply with AML/CTF measures.

Additionally, Estonia has implemented EU Directive 2015/849, which established a European legal framework for virtual currencies. The FSA has indicated that it is keeping a close eye on DeFi activities and has emphasised the need for service providers to adhere to the same standards of customer protection and market integrity as traditional financial services providers. These events suggest that the government of Estonia has taken a positive approach to regulating virtual assets and crypto-related activities.

8. Advantages of setting up a VASP in Estonia

According to a report by Statista, the global virtual currency market size is projected to reach over $4.3 billion by 2027, growing at a compound annual growth rate of 12.8% from 2020 to 2027. This growth is expected to be driven by factors such as increasing acceptance of virtual currencies as a mode of payment, growing demand for remittance solutions, and rising investment in virtual currency startups.

1. *High Level of Digital Adoption*: Estonia is a highly digital society, with a high level of digital adoption among its citizens. According to the World Bank, Estonia ranks first in the world for the number of online services offered by the government. This high level of digital adoption can benefit VASPs in terms of customer acquisition and operational efficiency.
2. *Competitive Business Environment*: Estonia has a competitive business environment, with a simple and efficient business registration process. According to the World Bank's Doing Business report, Estonia ranks 18th out of 190 countries for ease of doing business. This can help VASPs to establish and operate their business efficiently.
3. *Strong Cybersecurity Framework*: Estonia has a strong cybersecurity framework, with a high level of technical expertise. According to the Global Cybersecurity Index, Estonia ranks 5th out of 194 countries for its commitment to cybersecurity. This can benefit VASPs in terms of security and operational resilience.
4. *Favorable Tax Environment*: Estonia has a favorable tax environment, with a corporate income tax rate of 20% and a 0% tax rate on retained and reinvested profits. According to a report by KPMG, Estonia ranks 1st out of 137 countries for its tax competitiveness. This can help VASPs to reduce their tax liability and reinvest their profits in their business.

March 2024

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Isle of Man

1. Virtual asset laws and regulations in the Isle of Man

The Isle of Man has developed a conducive regulatory environment to facilitate innovation in the digital asset space. The Proceeds of Crime Act (**POCA**) was amended in 2015 to require virtual currency businesses to comply with Anti-Money Laundering and Countering the Financing of Terrorism (**AML/CFT**) regulations, and the Designated Businesses Registration and Oversight Act 2015 requires businesses whose activities involve virtual currencies to register with, and be overseen by, the Isle of Man Financial Services Authority (**IOMFSA**). The IOMFSA has released guidelines that certain cryptocurrencies, like Bitcoin and Ethereum, will not be considered securities and will fall outside regulatory oversight.

To ensure that companies operating in this sector comply with AML/CFT requirements, designated businesses must register with the IOMFSA and, depending on the nature of their activities, may require a financial services license.

What is considered a virtual asset in the Isle of Man?

According to the Designated Businesses (Registration and Oversight) Act 2015, a "virtual asset" means convertible virtual currencies, including cryptocurrencies, and any other digital representation of value that can be used to purchase goods or services.

"Convertible virtual currency activity" means issuing, transmitting, transferring, providing safe custody or storage of, administering, managing, lending, buying, selling, exchanging or otherwise trading or intermediating convertible virtual currencies, including cryptocurrencies, virtual assets or similar concepts where the concept is accepted by persons as a means of payment of goods or services, a unit of account, a store of value or a commodity.

What are the relevant laws and regulations?

The Isle of Man has established a regulatory framework for virtual assets designed to strike a balance between consumer protection, anti-money laundering measures, and innovation in the digital asset space. Below given are the relevant laws and regulations related to virtual assets in the Isle of Man.

1. *The Financial Services Act, 2008*: It regulates the financial services industry in the jurisdiction and the IOMFSA. It also establishes a framework for licensing regulated activities and licensing requirements to licensees. The act includes provisions related to the supervision, inspection, and investigation of licensees, as well as the prohibition of carrying out regulated activities without a license. The act also includes provisions for directors, controllers, and key people of licensees, and for the publication of information by the authority. Finally, the act establishes several schedules detailing further provisions related to regulation and supervision of financial services and other matters.
2. *Designated Business Registration and Oversight Act, 2015*: The Designated Business Registration and Oversight Act 2015 provides that virtual currency businesses are designated businesses, requiring such businesses to register with, and be overseen by, the Isle of Man Financial Services Authority. Virtual currency businesses are defined in the Act as those that are in "the business of issuing, transmitting, transferring, providing safe custody or storage of, administering, managing, lending, buying, selling, exchanging, or otherwise trading or intermediating convertible virtual currencies, including cryptocurrencies or similar concepts where the concept is accepted by persons as a means of payment for goods or services, a unit of account, a store of value or a commodity."
3. *Proceeds of Crime Act, 2008*: The POCA is the key piece of primary legislation in the Isle of Man that governs money laundering and other forms of financial crime, and it applies to virtual currency businesses. Virtual currency businesses are subject to the Anti-Money Laundering and Countering the Financing of Terrorism Code 2019 (**AML/CFT Code**), whether they are licensed by the IOMFSA or are 'designated businesses' under the Designated Businesses Act.
4. *Regulated Activities Order, 2011*: It prescribes certain activities in relation to virtual currencies that require financial services licensing. Depending on the nature of the token and the activities being conducted, entities involved in virtual currencies may be required to apply for a financial services license from the IOMFSA.
5. *Financial Services (Exemptions) Regulations, 2011*: It provide a legal framework for certain activities related to virtual currencies and offer exemptions from licensing requirements.
6. *Guidelines Issued by IOMFSA*: IOMFSA has issued guidance to virtual currency businesses to comply with regulatory standards and avoid penalties. The guidance provides clarification on the Anti-Money Laundering and Countering the Financing of Terrorism Code 2019, and advice on good practices for data protection and cybersecurity.

Who do such laws and regulations apply to?

The laws and regulations related to virtual assets apply to virtual currency businesses, which are defined as those that are in "the business of issuing, transmitting, transferring, providing safe custody or storage of, administering, managing, lending, buying, selling, exchanging, or otherwise trading or intermediating convertible virtual currencies, including cryptocurrencies or similar concepts where the concept is accepted by persons as a means of payment for goods or services, a unit of account, a store of value or a commodity" in the Isle of Man.

Who are the relevant regulatory authorities in relation to virtual assets in the Isle of Man?

The IOMFSA is the relevant regulatory authority when it comes to virtual assets in the Isle of Man. The IOMFSA is responsible for the licensing, registration, and supervision of virtual currency businesses as detailed in the Designated Business Registration and Oversight Act 2015, and they also issue guidance to ensure compliance with regulatory standards and good practices concerning data protection and cybersecurity.

What are the penalties for breaches of virtual asset laws and regulations in the Isle of Man?

The Designated Businesses (Registration and Oversight) Act 2015 does not use the phrase "virtual asset". Instead, it refers to "Designated Businesses". It specifically describes the prohibition on carrying on a designated business without being registered. It states that any person who carries on a designated business without being registered commits an offence.

On summary conviction, a person may be liable to a fine not exceeding £5,000 or to custody for a term not exceeding 12 months, or to both. On conviction on indictment, a person may be liable to a fine or to custody for a term not exceeding two years, or to both.

Additionally, the IOMFSA has the power to impose civil penalties on designated businesses that breach their regulatory obligations. The maximum civil penalty is £5,000,000 or 10% of turnover for companies, and £500,000 for individuals.

The maximum financial penalty that can be levied for non-compliance with anti-money laundering requirements is £1 million, as set out in the AML/CFT Code,2019. The IOMFSA can also revoke a virtual currency business's license if it is found to be non-compliant with the laws and regulations concerning virtual assets.

2. Regulation of virtual assets and offerings of virtual assets in the Isle of Man

Are virtual assets classified as 'securities' or other regulated financial instruments in the Isle of Man?

Virtual assets are not classified as securities or other regulated financial instruments in the Isle of Man. They are classified as designated businesses under the Designated Businesses

(Registration and Oversight) Act 2015. The Act provides for the regulation and oversight of various businesses that are at risk of being used for laundering the proceeds of crime or for financing terrorism, including virtual asset service providers. Therefore, the regulatory regime for virtual assets in the Isle of Man focuses on anti-money laundering and countering the financing of terrorism, rather than securities regulation.

Are stablecoins and NFTs regulated in the Isle of Man?

Stablecoins are likely to fall within the purview of electronic money regulation in the Isle of Man, although this has not yet been tested in judicial or regulatory proceedings.

On the other hand, NFTs may potentially fall under the definition of "financial instrument" under the Regulated Activities Order 2011 of the Isle of Man. The Order defines "financial instrument" quite broadly as "any instrument which –

1. creates or acknowledges indebtedness;
2. creates or acknowledges any transferable right to participate in the profits or losses arising from property of any kind, or any such right sandwiched between such rights; or
3. is a contract for differences".

NFTs are a new phenomenon, and there is no specific reference to them. Therefore, the regulatory status of NFTs in the Isle of Man is unclear at the moment.

It is important to note that the application of regulations to stablecoins and NFTs depends on their specific use case and characteristics.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in the Isle of Man?

Schedule 1 to the Regulated Activities Order 2011 specifies the classes of regulated activities for the purpose of the Financial Services Act 2008. It lays out a list of activities that are regulated, including deposit taking, insurance, investment, advising, and administration.

Lending virtual assets may be classified as accepting deposits of money for investing or lending purposes, which is regulated under Class 1 Deposit-Taking of Schedule 1. Therefore, DeFi activities such as lending virtual assets could be regulated under the Financial Services Act 2008 depending on the exact structure of the lending activity. However, at present, virtual assets themselves are not treated as money or currency in the Isle of Man, so they would not fall under the definition of "deposit" as used in Schedule 1A.

Are there any restrictions on issuing or publicly offering virtual assets in the Isle of Man?

1. Yes, there are restrictions on issuing or publicly offering virtual assets in the Isle of Man. The Designated Businesses (Registration and Oversight) Act 2015 defines "designated businesses" as including businesses engaged in convertible virtual currency activity. Section 7(1)(c) of the same act states that a person must not carry on a designated business in or from the island unless the person complies with AML/CFT legislation. Moreover, of the POCA, as amended by The Designated Businesses

(Registration and Oversight) Act 2015, makes it an offense to issue or publicly offer virtual assets that are not in compliance with AML/CTF legislation.

2. IOMFSA generally refuses to register persons carrying out initial coin offerings (**ICO**) where the coin issued provides no benefit to the purchaser other than the coin itself. Virtual currencies of this nature are generally considered by the IOMFSA to be posing an unacceptably high risk that the money raised from the ICO could be used for unanticipated and illegal purposes, as well as posing a risk to consumers.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in the Isle of Man?

The Financial Services (Exemptions) Regulations 2011 provide a number of exemptions for persons who do not hold a license under the Financial Services Act 2008 but are still engaged in certain types of regulated activity. The regulations grant exemptions to certain activities that are classified as regulated activities under the Collective Investment Schemes Act 2008, and also to those who make use of specific equipment under certain circumstances.

Under Schedule 1 of the Financial Services (Exemptions) Regulations 2011, persons who do not hold a license under the Act are exempt from the license requirement in certain circumstances. For example, individuals or businesses engaged in providing financial services related to certificates of deposit or participating in crowdfunding platforms may be exempt under certain conditions. Additionally, Schedule 1 also specifies exemptions for companies and their employees who carry out activities that are restricted solely to the supply of goods and services, the holding of real property, or manufacturing in the Isle of Man, among others.

Schedule 2 of the Financial Services (Exemptions) Regulations 2011 provides exemptions for the use of specific equipment in the Isle of Man. For example, certain persons who are permitted to utilise equipment in connection with virtual assets are exempt from requiring a license under certain conditions.

While the Financial Services (Exemptions) Regulations 2011 provides various exemptions that allow individuals and organisations engaged in specific types of regulated activity to operate without holding a license, these exemptions are not absolute.

Firstly, the exemptions apply only to specific types of regulated activities and only in certain circumstances. For instance, Schedule 1 of the regulations specifies exemptions for certain types of regulated activity, such as crowdfunding or certificates of deposit, only under certain conditions.

Furthermore, the exemptions are subject to specific conditions that must be met by individuals or businesses looking to make use of a particular exemption. For example, Schedule 1 of the regulations specifies a number of conditions that must be met by companies and their employees seeking an exemption for carrying out regulated activity restricted solely to the supply of goods and services, the holding of real property or manufacturing in the Isle of Man, among others. These conditions include requirements for the company to be resident in the Isle of Man, to have a permanent establishment in the island, and to have the company's activities restricted solely to certain types of activity.

Similarly, exemptions under Schedule 2 of the regulations require compliance with specific conditions, such as the use of prescribed equipment or the person or entity providing virtual asset-related services being resident in the Isle of Man or having a place of business there.

3. Regulation of VASPs in the Isle of Man

Are VASPs operating in the Isle of Man subject to regulation?

Yes, virtual asset service providers (**VASPs**) operating in the Isle of Man are subject to regulation under the POCA and the AML/CFT Code 2019.

According to the AML/CFT Code 2019 issued by IOMFSA, VASPs are considered to be carrying out "relevant financial business" which is subject to AML/CFT regulation in the Isle of Man.

This means that any person or company that conducts virtual asset-related business in or from the Isle of Man must comply with anti-money laundering and counter-terrorism financing measures applicable to financial services businesses under the island's regulatory framework. The measures require VASPs to implement policies and procedures to prevent money laundering and financing of terrorism, to undertake customer due diligence measures and ongoing monitoring of transactions, to appoint a designated nominative officer (**DNO**), and to report suspicious transactions under POCA.

Furthermore, the regulations require VASPs to apply for a license under the Designated Businesses (Registration and Oversight) Act 2015, which imposes additional AML/CFT regulations on designated businesses, including financial businesses, in the Isle of Man.

In summary, VASPs operating in the Isle of Man are required to comply with AML/CFT regulations, which include applying for a license under the Designated Businesses (Registration and Oversight) Act 2015, implementing relevant policies and procedures, conducting customer due diligence and monitoring, and appointing a designated nominee officer and reporting suspicious transactions under POCA.

Are VASPs providing virtual asset services from offshore to persons in the Isle of Man subject to regulation in the Isle of Man?

According to the Designated Businesses (Registration and Oversight) Act 2015, any business which engages in 'convertible virtual currency activity' in or from the Isle of Man must register with the IOMFSA under the act. Therefore, VASPs providing virtual asset services from offshore to persons in the Isle of Man would be considered engaging in activities from the Isle of Man and subject to regulation by the IOMFSA. They would need to register with the IOMFSA for compliance with the AML/CFT Code 2019 and would be subject to regulatory oversight by the IOMFSA.

What are the main requirements for obtaining licensing / registration as a VASP in the Isle of Man?

Under the Designated Businesses (Registration and Oversight) Act 2015, any business that provides virtual asset services in or from the Isle of Man must register with the IOMFSA. Companies planning to engage in cryptocurrency activities such as transferring, exchanging, or providing secure storage of convertible virtual currencies, must also pay a special state fee and have first opened an account with a local bank. They must apply for a license and submit a package of documents including a business plan, description of services offered, information about the project team, financial statements, a document confirming the sources of income, and others.

Companies must also comply with the requirements of anti-money laundering legislation, including developing and implementing procedures for collection of customer data and maintaining records of the company's activities to combat criminal schemes.

The approval process is designed in a way that the regulator conducts the examination for compliance with requirements on an individual basis as different applicants have varying circumstances. The IOMFSA also has several enforcement powers, including the ability to levy fines, issue directions, and in the most serious cases, revoke a registration or license.

It is important to note that being a registered designated business does not mean that you are automatically regulated by the IOMFSA. Instead, virtual currency providers (including ICOs) that are registered are overseen only for compliance with Anti-Money Laundering and Countering the Financing of Terrorism legislation (including the Code) just like other designated businesses.

The guidance issued by IOMFSA on virtual currency activity states that businesses do not need a financial services license or registration as a designated business to merely make or receive payments for goods or services in cryptocurrencies.

However, if a virtual currency business plans on running a token exchange for cryptocurrencies (such as Bitcoin or Ether), and it would not be handling tokenised securities, then it would not need a license from IOMFSA but it would need to be registered with the IOMFSA under the Designated Business (Registration and Oversight) Act 2015 and comply with the Anti-Money Laundering and Countering the Financing of Terrorism Code 2019.

If the virtual currency business plans on handling tokenised securities, it could only be operated under an Isle of Man crowdfunding platform, which requires a financial services license with class 6 permissions.

What are the main ongoing requirements for VASPs regulated in the Isle of Man?

According to the 'Designated Businesses (Registration and Oversight) Act 2015,' the main ongoing requirements for VASPs regulated in the Isle of Man are:

1. *Annual returns*: Registered VASPs must submit an annual return for each year, containing information as specified by the IOMFSA.

2. *On-site inspections and investigations*: The IOMFSA may carry out inspections and investigations at a registered VASP's premises to assess the extent to which the registered VASP meets the requirements of AML/CFT legislation and the IOMFSA's own procedures for compliance with them.
3. *Requests for information*: The IOMFSA has the power to require information from any person that it considers necessary for the purpose of monitoring compliance.
4. *Search warrants*: With a search warrant, the IOMFSA may enter, inspect, and search any premises that it considers is necessary for the purpose of monitoring compliance.
5. *Auditors to report prescribed matters to the IOMFSA*: If an auditor knows or becomes aware of prescribed matters while discharging any of the auditor's functions in relation to a registered VASP, the auditor must report those matters to the IOMFSA.
6. *Register and publication of information about registered persons*: The IOMFSA must keep a register of registered VASPs on its website containing the name, description of the designated business, and the principal address in the Island from which the VASP carries on, or used to carry on, the business. The register may also contain any information in respect of a formerly registered VASP for up to one year after that VASP ceased to be registered.
7. *Directions and public statements*: The IOMFSA may issue directions or make public statements if it considers that it needs to take action in the best interests of the public.
8. *Guidance*: The IOMFSA may prepare and issue guidance for the purpose of establishing sound principles for compliance by registered VASPs with the Act and AML/CFT legislation.

What are the main restrictions on VASPs in the Isle of Man?

The Designated Businesses (Registration and Oversight) Act 2015 requires certain businesses, including those engaged in convertible virtual currency activity, to register with and comply with anti-money laundering and countering the financing of terrorism legislation monitored by the IOMFSA.

What are the main information that VASPs have to make available to its customers?

The Designated Businesses (Registration and Oversight) Act 2015 lists provisions on what information VASPs must supply to their customers.

Section 20 of the Designated Businesses (Registration and Oversight) Act 2015 provides provisions on the information that registered persons (such as VASPs) must make available to their customers. The details that must be made public include the name of the registered person, details of the nature of the business they conduct, the address from which the person carries on or intends to carry on such business, and details of any person who is a specified person in relation to the registered person.

Additionally, Section 23 of the Designated Businesses (Registration and Oversight) Act 2015 requires auditors of the registered person to report prescribed matters to the Authority (IOMFSA).

Furthermore, Section 24 of the Designated Businesses (Registration and Oversight) Act 2015 requires the IOMFSA to establish and maintain a register of all registered persons. The register must contain certain information, such as the name of each registered person, the address of their principal place of business, the date on which they were registered, and the date on which their registration was revoked or surrendered. The register must be made available to the public in a manner that the IOMFSA considers appropriate.

What market misconduct legislation/regulations apply to virtual assets?

The Isle of Man Anti-Money Laundering and Countering the Financing of Terrorism Handbook 2020 applies to all entities registered under the Designated Businesses (Registration and Oversight) Act 2015, which includes VASPs. It requires all Designated Non-Financial Businesses and Professions, including VASPs, to implement measures to prevent money laundering and terrorist financing activities, report any suspicious activity, and conduct customer due diligence procedures.

Additionally, the IOMFSA has published the "Guidance Note on Cybersecurity for Regulated Entities," which sets out the measures that regulated entities should implement to mitigate the risks of cyber threats. The guidance note is technology-neutral, which means that it applies to all types of assets, including virtual assets.

4. Regulation of other crypto-related activities in the Isle of Man

Are managers of crypto funds regulated in the Isle of Man?

Yes, managers of cryptocurrency funds are regulated in the Isle of Man. The Collective Investment Schemes (Definition) Act 2008 provides the framework for investment funds in the Isle of Man. Under the Act, the IOMFSA regulates "collective investment schemes," which includes crypto funds. In order to operate in the Isle of Man, a crypto fund manager must be registered with the IOMFSA.

The IOMFSA considers the registration of cryptocurrency fund managers under the 'professional investor fund' and 'qualifying investor fund' categories of investment funds. Managers must comply with anti-money laundering AML/CTF regulations and must include provisions for investment holding, risk management, and pricing in their fund's documentation. The IOMFSA also released guidance on asset tokenisation and digital asset custody, which provides clear instructions for fund managers operating in the digital asset space.

In summary, the IOMFSA has created a regulatory framework that includes monitoring of cryptocurrency funds and their managers. Hence, crypto funds that operate within and

outside Isle of Man but target investors or operate in the Isle of Man still need to comply with the regulatory framework set by the IOMFSA.

Are distributors of virtual asset funds regulated in the Isle of Man?

Yes, distributors of virtual asset funds are regulated in the Isle of Man. The Designated Businesses (Registration and Oversight) Act 2015 mandates that certain designated businesses operating in or from the Isle of Man must register with the IOMFSA. Virtual asset funds distributors are one of the categories of businesses required to register.

Under the Designated Businesses (Registration and Oversight) Act 2015 Act, virtual asset distributors must maintain AML/CTF procedures, which includes conducting ongoing customer due diligence (**CDD**) checks, reporting suspicious transactions to the relevant authorities, and ensuring data protection requirements are met.

Additionally, the IOMFSA regulates virtual asset dealers under its AML/CFT regime. Dealers must comply with the guidance issued and register with the IOMFSA. A virtual asset dealer is any person, whether inside or outside the Isle of Man, who on a regular basis, trades or arranges transactions in virtual assets as a business, or a person by way of business provides services to safeguard, or administer virtual assets, or provides virtual asset exchange services.

Therefore, virtual asset funds distributors operating in the Isle of Man must register with the IOMFSA and implement the necessary AML/CFT measures.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in the Isle of Man?

Yes, there are requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in the Isle of Man. According to the Designated Businesses (Registration and Oversight) Act 2015, virtual asset dealers, including intermediaries, must register with the IOMFSA.

Intermediaries, who on behalf of a customer, arrange transactions in virtual assets, including acting as a custodian or administrator of virtual assets, must register with the IOMFSA as a dealer. Intermediaries who provide investment advice in relation to virtual assets, such as recommending a customer to buy or sell virtual assets, are also subject to the same registration requirements.

The IOMFSA provides guidance on the licensing process and requirements for virtual asset dealers, including intermediaries. According to the IOMFSA, interim regulatory guidance issued in 2018, dealers must comply with various AML/CFT requirements, including the identification of customers, conducting customer due diligence, ongoing customer monitoring, and transaction reporting.

Therefore, intermediaries seeking to offer trading services on virtual assets or advise clients on virtual assets must register with the IOMFSA and adhere to the AML/CFT requirements.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in the Isle of Man?

There are concerns about consumer protection, as the current regulatory approach is perceived to lack emphasis on safeguarding consumer interests. Currently, there are no bespoke consumer protection regimes, but it is possible that the Isle of Man will introduce more bespoke regulations in the future if the consumer adoption of virtual currencies becomes more widespread.

Has there been any notable events in the Isle of Man that has prompted regulatory change recently?

Recent initiative includes a public consultation launched by the financial authorities to discuss possible expansions of its laws on crypto assets. This consultation aims to gather feedback on the Financial Services Act (2008) and other proposals to regulate the crypto sector more effectively. The move comes in response to identified risks associated with money laundering and the volatility of crypto assets, highlighting the need for a more regulated environment.

Furthermore, to provide regulatory certainty for crypto businesses, the IOMFSA has introduced a new registration process for these companies. This process includes a 'subject to' registration under the Designated Businesses (Registration and Oversight) Act 2015, requiring crypto businesses to have a physical presence on the island and at least two Isle of Man resident directors. This measure is designed to ensure that management and control of the business remain on the island, facilitating effective oversight.

6. Pending litigation and judgments related to virtual assets in the Isle of Man (if any)

There are currently no pending litigations or judgments in the Isle of Man.

7. Government outlook on virtual assets and crypto-related activities in the Isle of Man

The IOMFSA has taken a cautious approach to crypto-asset regulation. Many companies dealing with crypto on the island aren't directly regulated by the IOMFSA, except when it comes to following AML laws. This approach highlights the island's careful handling of the changing crypto world, trying to encourage innovation while also making sure to address the risks linked to money laundering and terrorism financing.

8. Advantages of setting up a VASP in the Isle of Man

There are several advantages to setting up a Virtual Asset Service Provider (VASP) in the Isle of Man:

1. *Positive regulatory environment*: The Isle of Man has created a conducive regulatory environment for cryptocurrencies and has actively engaged with industry stakeholders to develop robust regulatory frameworks. This regulatory environment seeks to balance consumer protection, anti-money laundering measures, and fostering innovation in the digital asset space.
2. *Extensive financial services infrastructure*: The Isle of Man has a well-developed financial services sector that includes banking, fund management, and trust services. This infrastructure provides a solid foundation for VASPs to operate and thrive.
3. *Favourable tax environment*: The Isle of Man has a low tax rate and offers a competitive tax environment for VASPs and other cryptocurrency-related businesses.
4. *Safe and stable environment*: The Isle of Man has a low crime rate and provides a safe and stable environment for VASPs to conduct their business. The island's telecommunications infrastructure can also support the needs of digital businesses, including VASPs.

The Isle of Man government provides several grants and funding support schemes for businesses, including VASPs. These include:

1. *Micro Business Grant Scheme*: New qualifying start-up businesses may be offered funding of up to £6,000 and a further £10,000 to support job creation, training, and mentoring opportunities.
2. *Financial Assistance Scheme*: Provides a range of grants and loan support of up to 40% funding toward capital and operating items for start-ups, local businesses looking to expand, and off-island businesses looking to relocate to the Isle of Man.
3. *Business Improvement Scheme*: May provide a grant of 50% towards improvement projects with a maximum of £5,000 per project to businesses wishing to undertake an improvement project.
4. *Employee Relocation Incentive*: Provides a 20% grant of up to £10,000 towards the cost of relocating an employee to the Isle of Man.

In addition, grants of up to £10,000 may be available, depending on the nature and size of the business, as well as interest-free loans of up to £20,000 per project to improve a business's energy efficiency. These schemes and grants are available to VASPs and other businesses operating in the cryptocurrency ecosystem.

February 2024

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Gibraltar

1. Virtual asset laws and regulations in Gibraltar

The Gibraltar Financial Services Commission (**GFSC**) initiated a consultation process in May 2017 to develop a regulatory framework for Distributed Ledger Technology (**DLT**) providers. The objective was to create a principles-based and adaptable framework that could address the aspects and risks associated with various business models and technologies in the virtual assets sector.

Following the consultation process, the GFSC finalised and implemented the DLT framework in January 2018. This framework established nine core principles and accompanying 10 guidance notes for DLT providers, with a focus on key areas such as corporate governance, risk management, consumer protection, and financial crime prevention. Furthermore, the Financial Services Act, 2019 (**FSA**) ensures that any activities involving virtual/digital assets are conducted in compliance with regulations set by the GFSC. The GFSC has continued to refine and develop its regulatory approach, introducing additional regulations for Initial Coin Offerings (**ICOs**), Security Token Offerings (**STOs**), and other token sales.

Moreover, Gibraltar adheres to international Anti-Money Laundering and Counter-Terrorist Financing (**AML/CFT**) regulations for virtual asset service providers (**VASPs**) in line with the recommendations set forth by the Financial Action Task Force (**FATF**).

What is considered a virtual asset in Gibraltar?

According to the Proceeds of Crime Act 2015 (Transfer of Virtual Assets) Regulations 2021, a virtual asset is "*any digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes, but does not include digital representations of fiat currencies and securities.*"

In Gibraltar, the virtual assets can be bought, sold, held, or transferred using DLT. Under the DLT regulation system, VASPs must have a local presence in the jurisdiction, be licensed and to be compliant with any anti-money laundering AML/CTF regulations.

What are the relevant laws and regulations?

Gibraltar has established a comprehensive regulatory framework for virtual assets, which includes several relevant laws, regulations, and guidance documents. Key components of this framework are:

1. *The Proceeds of Crime Act 2015 (Transfer of Virtual Assets) Regulations 2021*: known as the travel rule regulations, require virtual asset service providers to gather specific customer information for transactions equal to or exceeding one thousand euros.

   Additionally, the Proceeds of Crime Act 2015 (Amendment) Regulations 2021 also introduced definitions of virtual asset that has explicitly excluded 'digital representations of fiat currencies' and explains registration requirements for businesses involved in tokenised digital asset sales or DLT-based value exchanges. Failure to register or comply may lead to enforcement actions by the GFSC, including registration suspension or cancellation, subject to appeal in the Supreme Court within 28 days of the decision notice.

2. *Financial Services Act, 2019*: The FSA provides the GFSC with the necessary powers to regulate and supervise financial activities, including those related to virtual assets. It ensures that any activities involving virtual assets are conducted in compliance with regulations set by the GFSC.

3. *DLT Framework*: Introduced by the GFSC in January 2018, the DLT framework is a purpose-built, principles-based, and flexible regulatory framework for DLT providers. It consists of nine core principles and accompanying guidance notes that focus on areas such as corporate governance, risk management, consumer protection, and financial crime prevention. The principles are:

   3.1 Honesty and integrity: DLT providers must conduct their business with honesty and integrity.

   3.2 Customer care: Firms must pay due regard to the interests and needs of each and all its customers and must communicate with its customers in a way that is fair, clear, and not misleading.

   3.3 Resources: A DLT provider must maintain adequate financial and non-financial resources.

   3.4 Risk management: Firms must manage and control their business effectively and take reasonable care to identify, manage, and mitigate risks.

   3.5 Protection of client assets: A DLT provider must arrange adequate protection for client assets.

   3.6 Corporate governance: Firms must have effective corporate governance arrangements.

3.7 Cybersecurity: DLT providers must have systems and security access protocols that are maintained to appropriate high standards.

3.8 Financial crime: Firms must have systems in place to prevent, detect, and disclose financial crime risks like money laundering and terrorist financing.

3.9 Resilience: DLT providers must have contingency plans in place to ensure they can continue their operations and meet their regulatory obligations during disruptions.

4. *Guidance Notes*: The GFSC has issued 10 guidance notes to supplement the DLT framework. These notes provide clarification on various aspects, including regulatory principles, risk management, protection of client assets, financial crime risks, technology and cybersecurity risks, resilience and contingency planning, governance arrangements, fitness and propriety of key individuals, outsourcing arrangements, and conflicts of interest.
5. *The Financial Services (Distributed Ledger Technology Providers) Regulations 2020*: is a set of rules that apply in Gibraltar to people who want to create and sell virtual assets. These people first have to get permission from the GFSA by submitting an application and relevant documents. These regulations cover the conditions for getting permission, the ongoing obligations that must be met, and the regulatory principles that must be followed. It's to note that these regulations don't stop people from creating virtual assets, but strict rules must be followed when doing so.
6. *AML/CFT Regime*: Gibraltar adheres to international AML/CFT regulations for VASPs in line with the recommendations set forth by the FATF. The Proceeds of Crime Act 2015 and the Criminal Justice (Proceeds of Crime) (Amendment) Regulations 2019 are examples of relevant legislation addressing AML/CFT requirements in Gibraltar.

Who do such laws and regulations apply to?

The virtual assets laws and regulations in Gibraltar are primarily designed for DLT providers, encompassing a wide range of activities related to virtual assets and blockchain technology. DLT providers include firms that use DLT for storing or transmitting value belonging to others, such as cryptocurrency exchanges, wallet service providers, and other businesses that facilitate the transfer, storage, or management of virtual assets.

Who are the relevant regulatory authorities in relation to virtual assets in Gibraltar?

The GFSC serves as the primary regulatory authority in Gibraltar, overseeing virtual assets and DLT. As an independent statutory body, the GFSC is responsible for the regulation and supervision of financial services in Gibraltar, including the virtual assets sector.

The GFSC's role in the DLT and virtual assets sector includes:

1. *Regulation and licensing*: The GFSC regulates and licenses DLT firms and activities, such as:

1.1 Crypto exchanges

1.2 Crypto-currency purse and asset storage service providers

1.3 Crypto-currency purse providers

1.4 DLT-based trading platforms that facilitate the purchase and sale of goods and services

2. *Authorisation and licensing of DLT suppliers*: The GFSC is responsible for authorising and licensing DLT suppliers, including distributors like cryptocurrency exchanges and depositories.

3. *Active supervision and enforcement*: The GFSC actively supervises and enforces DLT regulations in Gibraltar, ensuring that licensed entities comply with international standards and maintain high levels of corporate governance, risk management, and consumer protection.

4. *Guidance and regulatory updates*: The GFSC issues guidance notes and regulatory updates to help DLT providers understand and comply with their obligations under the DLT regulatory framework.

The Gibraltar New Technologies Association (**GANT**) has also been established to promote the development of blockchain and DLT.

What are the penalties for breaches of virtual asset laws and regulations in Gibraltar?

In Gibraltar, breaches of virtual asset laws and regulations can lead to various penalties and enforcement actions. These include:

1. *Penalties*:

1.1 *Imprisonment and fines*: Individuals failing to comply with regulations can face imprisonment for up to 2 years, fines, or both on conviction.

1.2 *Administrative penalties*: Offenders may face administrative penalties, public statements, cease and desist orders, temporary suspension, or prohibition orders for contravening regulatory requirements.

1.3 *Financial penalties*: Providing DLT services without a license can result in fines of up to £10,000.

2. *Enforcement Actions*:

2.1 *Financial penalties*: The GFSC can impose financial penalties of up to £5 million on firms or individuals for breaches.

2.2 *Public censure*: GFSC can publicly censure those in breach, impacting their reputation.

2.3 *Suspension or revocation of authorisation*: GFSC can suspend or revoke authorisation, preventing further provision of virtual asset services.

2.4 *Criminal prosecution*: Serious breaches may lead to criminal prosecution by law enforcement authorities.

2. Regulation of virtual assets and offerings of virtual assets in Gibraltar

Are virtual assets classified as 'securities' or other regulated financial instruments in Gibraltar?

In Gibraltar, virtual assets are not automatically classified as 'securities' or other regulated financial instruments. Instead, the classification of a virtual asset depends on its specific characteristics and the purpose for which it is used.

The Financial Services (Investment and Fiduciary Services) Act 1989 is the primary legislation that governs the regulation of securities and other financial instruments in Gibraltar. It defines a 'security' as any shares, stocks, bonds, debentures, warrants, options, futures, or other instruments of a like nature. Whether a virtual asset falls within the definition of a 'security' under this Act will depend on its specific features. For example, if a virtual asset is structured as a share or bond and provides its holder with ownership rights or an entitlement to receive dividends, it is likely to be classified as a security.

The GFSC has issued guidance on the classification of virtual assets, which provides further details on how virtual assets are classified in Gibraltar. The guidance sets out the factors that the GFSC considers when assessing the regulatory status of a virtual asset.

The GFSC considers various factors when assessing the regulatory status of a virtual asset, including:

1. *The nature and purpose of the virtual asset*: The GFSC considers the specific features of the virtual asset, such as its functionality, use case, and underlying technology. The GFSC also considers the purpose for which the virtual asset is used, such as whether it is used as a means of payment, a store of value, or a unit of account.
2. *The rights and obligations attached to the virtual asset*: The GFSC considers the rights and obligations that are attached to the virtual asset, such as whether it provides its holder with ownership rights, voting rights, or an entitlement to receive dividends.
3. *The marketing and distribution of the virtual asset*: The GFSC considers how the virtual asset is marketed and distributed, such as whether it is offered to the public or targeted at specific investors.
4. *The regulatory status of the issuer*: The GFSC considers the regulatory status of the issuer of the virtual asset, such as whether it is authorised or licensed by the GFSC or another regulatory authority.

Are stablecoins and NFTs regulated in Gibraltar?

In Gibraltar, the regulation of stablecoins and NFTs depends on their specific characteristics and the purpose for which they are used.

Stablecoins are a type of virtual asset that is designed to maintain a stable value relative to a specific asset or basket of assets. NFTs are a type of virtual asset that represents ownership of a unique item or piece of content, such as a work of art or collectible.

Stablecoins and NFTs are types of virtual assets that are subject to the GFSC's general approach to the regulation of virtual assets in Gibraltar. While the GFSC has not issued any specific guidance on the regulation of stablecoins or NFTs, they may be classified as securities or other regulated financial instruments if they meet the relevant criteria. The GFSC assesses virtual assets, including stablecoins and NFTs, on a case-by-case basis to determine their regulatory status, taking into account various factors such as their specific features, the rights and obligations attached to them, and the purpose for which they are used.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Gibraltar?

DeFi activities, such as lending virtual assets, may be regulated in Gibraltar under the Financial Services (Distributed Ledger Technology Providers) Regulations 2020. However, it's important to note that the regulations do not specifically mention DeFi activities, but rather apply to DLT providers that use DLT to store or transfer value belonging to others.

Under the Financial Services (Distributed Ledger Technology Providers) Regulations 2020, any person who wishes to provide DLT services, including DeFi activities, must apply for permission to carry out DLT Provider's business under the FSA. The application process involves submitting an application assessment request to the GFSC along with relevant documents and fees. The GFSC will then assess the nature and complexity of the proposed business model and inform the applicant of any steps that must be taken before applying for permission.

Once authorised, DLT Providers must comply with certain ongoing obligations, such as maintaining adequate financial and non-financial resources, implementing appropriate risk management systems, and complying with anti-money laundering and counter-terrorist financing requirements. DLT Providers must also adhere to the nine regulatory principles given in the regulations, which include principles such as acting with honesty and integrity, maintaining adequate IT systems and security, and protecting client assets.

The GFSC is responsible for supervising and enforcing compliance with the regulations. The GFSC has the power to issue directions and impose administrative penalties if a DLT Provider violates the regulations. The GFSC may also suspend or revoke a DLT Provider's authorisation if it fails to comply with the regulatory requirement.

Are there any restrictions on issuing or publicly offering virtual assets in Gibraltar?

The FSA and the Financial Services (Distributed Ledger Technology Providers) Regulations 2020 in Gibraltar establish a comprehensive regulatory framework for the issuance and public offering of virtual assets. Here are the key requirements and restrictions that apply to individuals and entities engaging in such activities:

1. *Authorisation requirement*: Any person who wishes to issue or publicly offer virtual assets in or from Gibraltar must obtain authorisation from the GFSC as a DLT provider. The authorisation process involves submitting an application assessment request to

the GFSC and providing relevant documents and fees. The GFSC will assess the proposed business model, products and services to be offered, and will provide the applicant with an initial assessment notice informing them of any required steps.

2. *Regulatory principles*: DLT providers that are authorised to issue or offer virtual assets must comply with the 9 regulatory principles given in the regulations, including conducting business with honesty and integrity, paying due regard to the interests and needs of all customers, and maintaining adequate financial and non-financial resources.
3. *General prohibition*: It is a criminal offense to carry out regulated activities related to virtual assets without proper authorisation from the GFSC. This includes issuing or publicly offering virtual assets without authorisation.
4. *Financial promotion restrictions*: The FSA imposes restrictions on financial promotions related to virtual assets. Any financial promotion must be clear, fair, and not misleading, and must comply with relevant GFSC rules and guidance.
5. *AML/CFT compliance*: DLT providers that issue or offer virtual assets must comply with AML/CFT regulations. This includes conducting customer due diligence, monitoring transactions, and reporting suspicious activity to the relevant authorities.
6. *Disclosure requirements*: DLT providers that issue or offer virtual assets must provide clear and accurate information to potential investors about the nature of the virtual asset, the risks involved, and the terms of the offer.
7. *Ongoing obligations*: DLT providers that are authorised to issue or offer virtual assets must comply with ongoing regulatory obligations, such as maintaining adequate financial and non-financial resources, implementing appropriate risk management systems, and adhering to AML/CFT regulations.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in Gibraltar?

Yes, there are some exemptions to the restrictions on issuing or publicly offering of virtual assets in Gibraltar. The Financial Services (Distributed Ledger Technology Providers) Regulations 2020 provide certain exemptions to the requirement to obtain authorisation as a DLT provider for the issuance or public offering of virtual assets. These exemptions include:

1. *Offers to a restricted number of persons*: An offer of virtual assets to a restricted number of persons (not exceeding 150) may be exempt from the requirement to obtain authorisation as a DLT provider, provided that certain conditions are met.
2. *Offers to existing customers*: An offer of virtual assets to existing customers of a DLT provider, provided that certain conditions are met, may be exempt from the requirement to obtain authorisation as a DLT provider.
3. *Offers of virtual assets with a denomination of €100,000 or more*: An offer of virtual assets with a denomination of €100,000 or more, provided that certain conditions are met, may be exempt from the requirement to obtain authorisation as a DLT provider.

4. *Offers of virtual assets to persons outside of Gibraltar*: An offer of virtual assets to persons outside of Gibraltar may be exempt from the requirement to obtain authorisation as a DLT provider, provided that certain conditions are met.

3. Regulation of VASPs in Gibraltar

Are VASPs operating in Gibraltar subject to regulation?

Yes, VASPs operating in Gibraltar are subject to regulation under the Financial Services (Distributed Ledger Technology Providers) Regulations 2020. The regulations define VASPs as any person who, by way of business, provides one or more of the following services:

1. exchange between virtual assets and fiat currencies;
2. exchange between one or more forms of virtual assets;
3. transfer of virtual assets;
4. safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and
5. participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

VASPs operating in Gibraltar must obtain authorisation from the GFSC as a DLT provider. The authorisation process involves submitting an application assessment request and providing relevant documents and fees. Once authorised, VASPs must comply with ongoing regulatory obligations such as AML/CFT regulations, maintaining adequate resources, implementing risk management systems, and adhering to regulatory principles such as conducting business with honesty and integrity.

Are VASPs providing virtual asset services from offshore to persons in Gibraltar subject to regulation in Gibraltar?

Yes, VASPs providing virtual asset services from offshore to persons in Gibraltar may be subject to regulation in Gibraltar, depending on the nature and scope of their activities.

Under the Financial Services (Distributed Ledger Technology Providers) Regulations 2020, any person who carries out a "controlled activity" in or from Gibraltar is required to obtain authorisation from the GFSC as a DLT provider. Controlled activities include the exchange, transfer, safekeeping, and administration of virtual assets, as well as the provision of financial services related to an issuer's offer and/or sale of a virtual asset.

If a VASP is providing virtual asset services from offshore to persons in Gibraltar, and those services constitute a controlled activity, then the VASP may be required to obtain authorisation from the GFSC. This would depend on various factors, such as the nature and frequency of the services provided, the location of the VASP's headquarters and servers, and the degree of control exercised by the VASP over the virtual assets involved.

Even if a VASP is not required to obtain authorisation from the GFSC, it may still be subject to other regulatory regimes in Gibraltar, such as AML/CFT regulations.

What are the main requirements for obtaining licensing / registration as a VASP in Gibraltar?

The main requirements for obtaining licensing/registration as a VASP in Gibraltar are as follows:

1. submission of an application assessment request to the GFSC, along with relevant documents and fees;
2. provision of a detailed business plan outlining the proposed business model, products and services to be offered, and risk management systems;
3. demonstration of adequate financial and non-financial resources to support the proposed business activities;
4. implementation of appropriate AML/CFT policies and procedures, including customer due diligence and ongoing monitoring;
5. compliance with the regulatory principles outlined in the Financial Services (Distributed Ledger Technology Providers) Regulations 2020, including conducting business with honesty and integrity, paying due regard to the interests and needs of all customers, and maintaining adequate financial and non-financial resources;
6. appointment of a suitable compliance officer and money laundering reporting officer;
7. provision of adequate IT systems and security measures to protect customer data and assets;
8. maintenance of adequate insurance coverage to protect against potential risks; and
9. compliance with ongoing regulatory reporting and disclosure requirements.

Licensing fees for VASPs in Gibraltar are determined by the GFSC and are based on the complexity and risk profile of the applicant's proposed business model. The fees are split into two categories:

1. *Application fee*: This fee is payable at the time of submitting the application and covers the cost of the GFSC's initial assessment of the application. The application fee is currently set at £2,000.
2. *Annual fee*: This fee is payable once the license has been granted and is based on the VASP's annual revenue. The annual fee is calculated on a sliding scale, with the current rates ranging from a minimum of £10,000 to a maximum of £400,000.

It's worth noting that the GFSC may also impose additional fees for specific services, such as on-site inspections or investigations.

What are the main ongoing requirements for VASPs regulated in Gibraltar?

The main ongoing requirements for VASPs regulated in Gibraltar include:

1. *Compliance with AML/CFT regulations*: VASPs must have appropriate policies, procedures, and controls in place to prevent money laundering and terrorist financing. This includes conducting customer due diligence, monitoring transactions, and reporting suspicious activity to the relevant authorities.
2. *Maintenance of adequate financial and non-financial resources*: VASPs must maintain sufficient financial and non-financial resources to support their business operations and meet their regulatory obligations. This includes maintaining adequate capital, insurance, and liquidity.
3. *Implementation of appropriate risk management systems and controls*: VASPs must have appropriate risk management systems and controls in place to identify, assess, and manage risks associated with their business operations. This includes implementing appropriate IT systems and security measures to protect customer data and assets.
4. *Compliance with regulatory principles and guidance*: VASPs must comply with the 9 core principles and 10 guidance notes issued by the GFSC. This includes conducting business with honesty, integrity, and fairness, and having proper controls and governance arrangements in place.
5. *Reporting and disclosure requirements*: VASPs must comply with ongoing reporting and disclosure requirements, including submitting annual financial statements, regulatory returns, and other reports as required by the GFSC.
6. *Record-keeping requirements*: VASPs must maintain accurate and complete records of their business operations, including customer information, transactions, and financial records.

What are the main restrictions on VASPs in Gibraltar?

The main restrictions on VASPs in Gibraltar are as follows:

1. *Prohibited activities*: VASPs are prohibited from engaging in certain activities, such as providing investment advice or managing investments on behalf of customers, unless they hold additional authorisations or licenses.
2. *AML/CFT compliance*: VASPs must comply with AML/CFT regulations, including conducting customer due diligence, monitoring transactions, and reporting suspicious activity to the relevant authorities.
3. *Customer due diligence*: VASPs must conduct appropriate customer due diligence measures to verify the identity of their customers and assess the risks associated with their business relationships.
4. *Risk management*: VASPs must implement appropriate risk management systems and controls to identify, assess, and manage risks associated with their business operations.

5. *IT security*: VASPs must implement appropriate IT security measures to protect customer data and assets, and to ensure the integrity and availability of their systems.
6. *Conflicts of interest*: VASPs must have policies and procedures in place to identify and manage conflicts of interest, and to ensure that they act in the best interests of their customers.
7. *Marketing and advertising*: VASPs must ensure that their marketing and advertising materials are clear, fair, and not misleading, and that they comply with all relevant regulations and guidance.
8. *Record-keeping*: VASPs must maintain accurate and complete records of their business operations, including customer information, transactions, and financial records.
9. *Reporting and disclosure*: VASPs must comply with ongoing reporting and disclosure requirements, including submitting annual financial statements, regulatory returns, and other reports as required by the GFSC.

What are the main information that VASPs have to make available to its customers?

The main information that VASPs have to make available to their customers in Gibraltar includes:

1. *Terms and conditions*: VASPs must provide their customers with clear and concise terms and conditions that outline the rights and obligations of both parties.
2. *Fees and charges*: VASPs must disclose all fees and charges associated with their services, including transaction fees, deposit and withdrawal fees, and any other charges.
3. *Risks*: VASPs must provide their customers with clear and prominent warnings about the risks associated with virtual assets and the services provided by the VASP.
4. *Privacy policy*: VASPs must provide their customers with a privacy policy that outlines how their personal data will be collected, used, and protected.
5. *Complaints procedure*: VASPs must provide their customers with a clear and accessible complaints procedure, including information on how to make a complaint and the timeframes for resolving complaints.
6. *AML/CFT policies and procedures*: VASPs must provide their customers with information about their AML/CFT policies and procedures, including how customer due diligence is conducted and what information is required.
7. *Service availability*: VASPs must provide their customers with information about the availability of their services, including any planned or unplanned downtime.
8. *Insurance*: VASPs must provide their customers with information about any insurance coverage that is in place to protect customer assets.

What market misconduct legislation/regulations apply to virtual assets?

In Gibraltar, there is no specific market misconduct legislation or regulation that applies solely to virtual assets. However, the FSA provides a regulatory framework for financial services in Gibraltar, including the regulation of virtual assets.

The GFSC has issued guidance notes for VASPs operating in Gibraltar, which provide detailed information on the GFSC's expectations for VASPs in areas such as AML/CFT compliance, risk management, IT security, and customer due diligence.

The GFSC's guidance notes for VASPs also include expectations for preventing and detecting market misconduct, such as insider dealing and market manipulation. The guidance notes emphasise the importance of VASPs implementing appropriate systems and controls to prevent, detect, and report market misconduct, and to ensure that they are conducting their business with honesty, integrity, and fairness.

In addition to the guidance notes, the GFSC has also issued nine core principles for VASPs operating in Gibraltar. These core principles provide a framework for VASPs to operate in a safe and sound manner, and to protect the interests of their customers. The core principles include requirements for VASPs to:

1. conduct their business with honesty, integrity, and fairness;
2. pay due regard to the interests and needs of their customers;
3. maintain adequate financial and non-financial resources;
4. manage and control their business effectively;
5. establish and maintain effective risk management systems;
6. maintain effective systems and controls to counter the risk of financial crime;
7. be open and cooperative with the GFSC;
8. pay due regard to the information needs of their customers; and
9. conduct their business in a way that does not harm the reputation of Gibraltar.

4. Regulation of other crypto-related activities in Gibraltar

Are managers of crypto funds regulated in Gibraltar?

The Financial Services (Distributed Ledger Technology Providers) Regulations 2020 apply to regulation of crypto fund managers (DLT Providers) in Gibraltar. These regulations state that managers of crypto funds must be authorised before they can carry on this business. To obtain authorisation, managers of crypto funds must submit an initial application assessment request to the GFSC, providing relevant documents and other information.

Once authorised, managers of crypto funds must comply with ongoing obligations specified in the regulatory principles set out in the Schedule to the regulations. The regulatory principles require managers of crypto funds to conduct their business with honesty,

integrity, due skill, care, and diligence, among other requirements. So overall, managers of crypto funds in Gibraltar are subject to substantial regulation and oversight under the Financial Services (Distributed Ledger Technology Providers) Regulations 2020.

Are distributors of virtual asset funds regulated in Gibraltar?

The Financial Services (Distributed Ledger Technology Providers) Regulations 2020 are regulations that monitor the actions of virtual asset fund managers and distributors in Gibraltar. To run such a business in Gibraltar, the FSA requires authorisation from the GFSC. These regulations set out various obligations that such businesses must maintain to be eligible for authorisation from the GFSC. These include carrying adequate resources (both financial and non-financial), having effective prevention and detection systems against financial crimes, and informing the GFSC immediately of anything that could compromise their compliance with the regulations.

The GFSC has also issued guidance notes on various aspects of virtual assets, including the regulation of ICOs, tokens, and other related activities. These guidance notes provide clarification on the GFSC's expectations and the regulatory treatment of different types of virtual assets and activities. Moreover, it is essential for distributors of virtual asset funds to also adhere to Gibraltar's AML/CFT regulations, as well as any other relevant laws and guidelines.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Gibraltar?

Yes, there are requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Gibraltar. The GFSC regulates intermediaries that offer services related to virtual assets under the Financial Services (Distributed Ledger Technology Providers) Regulations 2020.

Intermediaries, such as brokers, dealers, and investment advisors, must obtain a license from the GFSC to provide services related to virtual assets. To be granted a license, intermediaries must demonstrate compliance with the GFSC's regulatory principles, which include maintaining adequate financial and non-financial resources, implementing effective risk management and governance arrangements, and adhering to strict AML/CFT measures.

In addition to obtaining a license, intermediaries must also comply with the GFSC's guidance notes on the regulation of ICOs, tokens, and other related activities. These guidance notes provide clarity on the GFSC's expectations for intermediaries operating in the virtual assets sector.

Intermediaries are required to maintain risk management and governance frameworks, implement appropriate internal controls, and ensure the protection of client assets. They must also provide clear and accurate disclosure to clients about the risks associated with virtual assets and ensure that their services are suitable for the clients' investment objectives and risk tolerance.

Ongoing supervision and monitoring by the GFSC are essential aspects of the regulatory framework for intermediaries in Gibraltar. Intermediaries must be prepared for on-site inspections, investigations, and periodic reporting requirements to ensure that they remain compliant with the relevant laws, regulations, and guidance notes.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in Gibraltar?

There are no specific upcoming regulatory developments in respect of crypto-related activity in Gibraltar beyond the current regulations and guidelines. However, the GFSC continues to supervise all DLT Providers, including AML/CTF supervision, to ensure compliance with the existing regulations.

Has there been any notable events in Gibraltar that has prompted regulatory change recently?

Gibraltar is a well-known hub for online gaming companies. In recent years, there have been regulatory changes in the gaming industry, such as the introduction of the Gambling Act 2005 and subsequent updates. These changes have helped Gibraltar maintain its reputation as a well-regulated jurisdiction for online gaming and have encouraged other sectors, like blockchain and cryptocurrencies, to seek similar regulatory clarity.

In March 2021, Gibraltar made significant changes to the Proceeds of Crime Act 2015 to address AML/CFT, particularly for DLT and virtual asset businesses. These changes include the introduction of the FATF Travel Rule for VASPs, which requires affected firms to comply with travel rule requirements, such as obtaining and securely storing particular information on their customers when there is a transaction value equal to or in excess of one thousand euros.

6. Pending litigation and judgments related to virtual assets in Gibraltar (if any)

1. *Globix Missing Funds Investigation*: The Gibraltar court freezes crypto assets totaling $43 million in a bid to locate and recover missing funds from the collapsed cryptocurrency trader Globix. This action involves freezing the digital assets of the company and its directors as part of the ongoing investigation.
2. *Mañasco Fund Misuse Allegations*: Former Mansion Casino CEO Karel Christian Mañasco faces a £5.0 million global freezing order on his assets following accusations of breaching duties, making unauthorised payments, and misusing company funds during his tenure at Mansion Casino.
3. *Miracle World Ventures Liquidation*: Miracle World Ventures Limited, registered in the British Virgin Islands, undergoes liquidation, prompting the Gibraltar Court to issue

injunctions and disclosure orders pertaining to crypto assets against various parties, including unidentified individuals. This marks the first instance of Gibraltar Courts issuing such injunctions regarding crypto assets.

7. Government outlook on virtual assets and crypto-related activities in Gibraltar

Gibraltar has established a comprehensive regulatory framework for virtual assets. The Financial Services (Distributed Ledger Technology Providers) Regulations 2020 set the rules that apply in Gibraltar to people who want to create and sell virtual assets. Under these regulations, entities must obtain authorisation from the GFSA before conducting activities involving virtual/digital assets. The regulations also specify the ongoing obligations that must be met and the regulatory principles that must be followed. The rules are designed to address risk management and represent principles-based regulations that allow innovation to flourish.

The GFSC has also issued ten guidance notes to supplement the DLT framework. These provide clarification on regulatory principles, risk management, financial crime risks, technology and cybersecurity risks, contingency planning, governance arrangements, fitness and propriety of key individuals, outsourcing arrangements, and conflicts of interest. The guidance notes are designed to assist DLT providers in understanding their obligations under the regulatory framework and maintaining high regulatory standards.

In addition to the guidance notes mentioned above, the GFSC provides additional guidance notes for VASPs operating in Gibraltar. These offer detailed information on the GFSC's expectations for VASPs in areas such as AML/CFT compliance, risk management, IT security, and customer due diligence. The guidance notes also include expectations for preventing and detecting market misconduct, such as insider dealing and market manipulation.

Failure to comply with these requirements may result in significant penalties, including fines and/or the revocation of authorisation, which could seriously impact the operations of the fund. Managers of crypto funds also must be prepared for ongoing supervision and monitoring by the GFSC. This includes on-site inspections and investigations by the GFSC, to ensure that the manager is fully compliant with the laws and regulations that are relevant to the operation of the fund in Gibraltar.

8. Advantages of setting up a VASP in Gibraltar

Gibraltar has become an attractive jurisdiction for VASPs due to its well-defined regulatory framework, favorable business environment, and adequate approach to the development of the blockchain and cryptocurrency industry. Some advantages of setting up a VASP in Gibraltar include:

1. *Regulatory clarity*: Gibraltar was one of the first jurisdictions to introduce a comprehensive regulatory framework for DLT providers, including VASPs. The GFSC

grants licenses to VASPs under the Financial Services (Distributed Ledger Technology Providers) Regulations 2020, ensuring a well-defined regulatory environment.

2. *Access to a skilled workforce*: Gibraltar has a growing pool of professionals with expertise in blockchain technology, cryptocurrencies, and financial services, making it easier for VASPs to find and hire qualified personnel.
3. *Favorable tax regime*: Gibraltar offers an attractive corporate tax system with a standard corporate tax rate of 10%. Additionally, there is no capital gains tax, withholding tax, or value-added tax in Gibraltar.
4. *Collaborative approach*: The Gibraltar government and the GFSC actively engage with industry stakeholders and promote the development of the blockchain and cryptocurrency ecosystem.
5. *Access to European markets*: Although Gibraltar is a British Overseas Territory, it maintains a close relationship with the European Union. This strategic location can provide VASPs with access to European markets, although the specific arrangements may change due to Brexit and other factors.
6. *AML/CFT framework*: Gibraltar has implemented strong AML/CFT regulations, ensuring that VASPs operating in the jurisdiction adhere to international standards and best practices.
7. *English common law*: Gibraltar's legal system is based on English common law, which provides a familiar and stable legal environment for businesses from common law jurisdictions.

April 2024

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Guernsey

1. Virtual asset laws and regulations in Guernsey

In 2014, the Guernsey Financial Services Commission (**GFSC**) published its first guidance on the regulation of virtual assets, which outlined an approach to the supervision of businesses involved in virtual asset activities. This guidance established that virtual assets would be treated as a form of "property" under Guernsey law, and that businesses engaging in virtual asset activities would be subject to the island's existing financial services regulations.

In 2018, the Commission published updated guidance that provided more detailed requirements for businesses operating in the virtual asset space, including measures related to AML/CFT compliance, consumer protection, and market integrity.

Despite these early regulatory efforts, it became clear that a more comprehensive legislative framework was needed to effectively regulate the growing virtual asset industry in Guernsey. This led to the development of the Lending, Credit and Finance (Bailiwick of Guernsey) Law 2022 (**LCF Law**), which was introduced in July 2023 and established a dedicated licensing regime for virtual asset service providers (**VASPs**).

The LCF Law built upon the GFSC's previous guidance, introducing a range of new requirements and restrictions for VASPs operating in Guernsey. This included the need for VASPs to obtain a Part III VASP License, comply with enhanced regulatory substance requirements, and adhere to restrictions on the types of virtual assets they can deal with.

Finally, the Regulations require Licensees to be transparent about the environmental impact of their virtual asset activities to comply with Guernsey's international commitment to reaching net-zero emissions by 2050.

What is considered a virtual asset in Guernsey?

In Guernsey, a virtual asset is defined under the LCF Law as a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes. However, virtual assets do not include digital representations of fiat currencies (i.e., cash) or general securities or derivatives (e.g., shares, debentures, bonds, loans, etc.) and other financial assets.

However, virtual assets do not include things like gift cards, loyalty points, or digital items used only in online games. The definition of virtual assets in Guernsey is intentionally broad to cover new products and services that may emerge in the future. This approach aligns with international standards set by the Financial Action Task Force (**FATF**) and ensures that all virtual asset activities are appropriately regulated.

What are the relevant laws and regulations?

1. The Electronic Transactions (Guernsey) Law, 2000 (**ET Law**) - This law provides a legal framework for electronic transactions in Guernsey, including the use of electronic signatures and the recognition of electronic records. The ET Law may be relevant to virtual asset activities that involve electronic transactions. For example, it may provide a legal basis for the use of smart contracts in virtual asset transactions.
2. The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (**Fiduciaries Law**) - This law regulates fiduciary activities in Guernsey, including the administration of virtual assets. Any person carrying out fiduciary activities in or from Guernsey must be licensed by the GFSC under this law. In 2014, the GFSC issued guidance on the application of the Fiduciaries Law to virtual currencies, clarifying that virtual currency exchanges and other virtual currency-related activities may fall within the scope of the Fiduciaries Law and may require licensing by the GFSC.
3. The Anti-Money Laundering and Countering Financing of Terrorism (Bailiwick of Guernsey) Law, 2008 (**AML/CFT Law**) - This law sets out the requirements for preventing money laundering and terrorist financing in Guernsey. VASPs are subject to the AML/CFT Law and must comply with its requirements, including conducting customer due diligence, monitoring transactions, and reporting suspicious activity. In 2018, the GFSC issued guidance on the application of the AML/CFT Law to virtual asset activities, providing clarification on the AML/CFT requirements for VASPs and setting out the GFSC's expectations for AML/CFT compliance.
4. The Protection of Investors (Bailiwick of Guernsey) Law, 1987 (**POI Law**) - This law regulates investment business in Guernsey. Any person carrying out investment business in or from Guernsey must be licensed by the GFSC under this law. Depending on the nature of the virtual assets involved, certain activities related to virtual assets may be considered investment business and subject to the POI Law. For example, the issuance of security tokens may be considered investment business and may require licensing by the GFSC.

5. Guidance Note on the Regulation of Virtual Currencies (2014) and Guidance Note on the Regulation of Virtual Assets (2018): These guidance notes issued by the GFSC shows the Commission's approach to the supervision of businesses involved in virtual asset activities. The 2014 guidance established that virtual assets would be treated as a form of "property" under Guernsey law. The 2018 guidance provided more detailed requirements for businesses operating in the virtual asset space, including measures related to AML/CFT compliance, consumer protection, and market integrity.
6. The Data Protection (Bailiwick of Guernsey) Law, 2017 (**Data Protection Law**) - This law regulates the processing of personal data in Guernsey. VASPs that process personal data in the course of their activities must comply with the Data Protection Law, including obtaining valid consent for the processing of personal data and implementing appropriate security measures to protect personal data. For example, VASPs may need to obtain consent from customers to collect and process their personal data for KYC/AML purposes.
7. The GFSC's Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing (**the Handbook**) - This handbook provides guidance on the AML/CFT requirements for financial services businesses in Guernsey, including VASPs. The Handbook sets out the GFSC's expectations for AML/CFT compliance, including customer due diligence, ongoing monitoring, and suspicious activity reporting. The Handbook is regularly updated to reflect changes in the regulatory landscape, and VASPs should ensure that they are familiar with the latest version.
8. LCF Law: This law came into effect on July 1, 2023, establishes a licensing regime for VASPs in Guernsey. It requires VASPs to obtain a Part III VASP Licence from the GFSC unless they qualify for an exemption. The law introduces regulatory substance requirements for VASPs, such as having a physical presence in Guernsey and maintaining a minimum level of assets and liabilities. It also imposes restrictions on the types of virtual assets that VASPs are permitted to deal with, prohibiting those that aim to obscure the parties or flow of the assets.

Who do such laws and regulations apply to?

LCF law explains that virtual assets laws and regulations apply to persons and entities carrying on or offering virtual asset services, or providing business by way of business from within Guernsey or any other location.

This means that if a person is offering virtual asset services while situated in Guernsey or they offer services to Guernsey residents, including through online means, they will be subject to relevant laws and regulations concerning virtual assets. Any Bailiwick bodies holding themselves as willing to carry on these services will also be subject to these requirements. These regulations apply under the authority of and following the specified conditions of a Part III VASP license. These conditions can include provisions relating to the types of services that may be provided, protection of customers and clients, reporting obligations, and more.

Who are the relevant regulatory authorities in relation to virtual assets in Guernsey?

The relevant regulatory authority for virtual assets in Guernsey is the GFSC. The GFSC is responsible for the regulation and supervision of financial services businesses in Guernsey, including VASPs, under the authority of the Bailiwick of Guernsey's law.

The GFSC has the power to grant or refuse VASP licenses, impose conditions on VASP licenses, and take appropriate action to enforce regulations. These actions include the power to carry out inspections, investigations, and to impose sanctions, such as fines or revocation of licenses, if VASPs do not comply with established regulations.

Additionally, in accordance with Guernsey's law, the Guernsey Financial Intelligence Service (**GFIS**) is responsible for overseeing anti-money laundering, counter-terrorism financing, and other financial crime matters in the Bailiwick. The GFIS works with the GFSC and other regulatory bodies to ensure the compliance of VASPs with international standards, best practices, and statutory requirements.

What are the penalties for breaches of virtual asset laws and regulations in Guernsey?

According to The LCF Law, section 77 states that a person who contravenes any provision regarding the prohibition of business of unlicensed virtual asset service providers is guilty of an offence. Here, the offences can include any violation of provisions of The LCF law and other regulatory laws related to virtual assets. For instance, an offence could be providing virtual asset services without being registered, or not disclosing necessary information to the authorities. Other possible offences may include fraudulent conduct or dishonesty connected to virtual asset services.

The maximum penalty varies depending on the offence committed. For example, the maximum penalty for an offense may be imprisonment for up to 7 years and/or a fine. The court can also order the seizure and forfeiture of any property used in connection with the offence.

Furthermore, according to the VASP regulations introduced by the GFSC in 2020, any individual who is a director, partner, or senior officer of a Guernsey entity providing virtual asset services without being registered under the VASP Act may face penalties of up to US$100,000 in fines and/or up to five years of imprisonment if they are found to have acquiesced in the commission of the offense.

2. Regulation of virtual assets and offerings of virtual assets in Guernsey

Are virtual assets classified as ‘securities’ or other regulated financial instruments in Guernsey?

In Guernsey, virtual assets are not classified as securities under the existing regulatory framework. The GFSC has a distinct regulatory approach to virtual assets, which are defined

as digital representations of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. This definition does not include digital representations of fiat currencies or general securities and derivatives.

The GFSC adopts a principles-based approach and assesses each case on its own merits. If a virtual asset falls within the scope of existing regulations, the relevant regulatory requirements would apply. For instance, if a virtual asset is considered a security, it would fall under the scope of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended.

However, not all virtual assets are considered securities or other regulated financial instruments. Utility tokens, for example, may not fall within the scope of existing regulations if they solely provide access to a product or service and do not confer any ownership rights or expectations of profit.

Are stablecoins and NFTs regulated in Guernsey?

Stablecoins and NFTs are not explicitly mentioned but are considered virtual assets under the LCF Law in Guernsey. Specifically, Part III, section 17 of the LCF Law regulates VASPs, which includes Guernsey-based businesses that offer virtual asset-related services.

If a stablecoin or NFT service is provided in or from within Guernsey, it is likely to be subject to Guernsey's regulatory regime under the LCF Law 2022. This means that the business or individual providing these services may need to obtain a Part III VASP License unless they fall under one of the exemptions specified under the Law.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Guernsey?

The regulation of DeFi activities, particularly those conducted by VASPs, falls under the purview of the LCF Law. Part III of this legislation specifically addresses VASPs, defining them as entities engaged in various services related to virtual assets, such as exchanging them for fiat currencies, facilitating exchanges between different virtual assets, transferring virtual assets, safeguarding virtual assets, and participating in financial services concerning the issuance or sale of virtual assets.

The law provides for the expansion of this definition by the Policy and Resources Committee of the States of Guernsey. A Part III VASP License is mandatory unless an exemption is applicable under the Lending, Credit, and Finance Law or the "Notice with respect to the disapplication of the requirement to hold a license under section 40 of the LCF Law" (the LCF Notice).

This regulatory framework necessitates that businesses engaging in activities governed by the LCF Law obtain a license, barring any exemptions. Furthermore, any VASP falling within the scope of regulation will also be subject to Guernsey's AML/CFT regime.

Are there any restrictions on issuing or publicly offering virtual assets in Guernsey?

Yes, there are restrictions on issuing or publicly offering virtual assets in Guernsey. The LCF Law regulates VASPs and sets out specific requirements for the issuance and public offering of virtual assets. The following are the key restrictions and requirements:

1. *Licensing requirement*: Any entity providing virtual asset services in or from within Guernsey must obtain a Part III VASP License from the GFSC.
2. *Retail customer ban*: VASPs in Guernsey are only permitted to provide services to institutional and wholesale counterparties, excluding retail investors.
3. *Definition of virtual assets*: The LCF Law defines virtual assets as digital representations of value that can be digitally traded, transferred, and used for payment or investment purposes. This definition excludes digital representations of fiat currencies, general securities and derivatives, and other financial assets.
4. *Public offering restrictions*: The GFSC has not explicitly stated restrictions on public offerings of virtual assets in Guernsey. However, the licensing requirements and the ban on retail customer services suggest that public offerings of virtual assets may be limited to institutional investors or wholesale counterparties.
5. *AML/CFT compliance*: The LCF Law aligns Guernsey with FATF guidance on virtual assets, ensuring that all VASP activities are subject to the jurisdiction's AML/CFT regime.
6. *Functional approach to regulation*: The GFSC takes a functional approach to determining whether VASP activities are carried out, focusing on the real and economic effect of the potential Licensee's business model and activities.
7. *No exemption for firms licensed in other jurisdictions*: The GFSC does not recognise equivalence of licensing. This means that even if a firm is licensed for VASP activities in another jurisdiction, it must also obtain a licence under the LCF Law if it provides such services in or from within Guernsey.

Failure to comply with these restrictions and requirements may result in severe penalties, including fines and imprisonment.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in the Guernsey?

Yes, there are exemptions to the restrictions on issuing or publicly offering of virtual assets in Guernsey. The LCF Law provides exemptions from the licensing requirement for certain activities such as where:

1. the business in question is provided only to customers of the main activity of the person carrying on the business and is not offered to the public;
2. the services offered are in connection with the administration or management of VASPs that hold a Part III VASP License or are exempted from such licensing requirement;

3. the virtual assets are traded by an authorised or registered collective investment scheme, pursuant to the PoI Law; or
4. the Policy and Resources Committee of the States of Guernsey specifies regulations granting exemptions under Section 21(1) of the LCF Law. However, to date, there are no such exemptions available.

There is no exemption for firms licensed under regulatory laws in other jurisdictions. The GFSC does not recognise equivalence of licensing, meaning that even if a firm is licensed for VASP activities elsewhere, it must also obtain a licence under the LCF Law if providing services within or from Guernsey.

3. Regulation of VASPs in Guernsey

Are VASPs operating in Guernsey subject to regulation?

According to Chapter 18 of the Handbook on Countering Financial Crime and Terrorist Financing (The handbook) issued by the Guernsey Financial Services Commission, the VASPs that provide or carry out exchange, transfer, safe-keeping, administration, custody, issue, offer, sale, distribution, trading and other activities in connection with virtual assets must register to obtain a Part III VASP licence under the LCF Law.

VASPs must comply with Schedule 3 to the Law and the rules and guidance of this Handbook to detect, prevent and mitigate against money laundering (**ML**) and terrorist financing (**TF**) risks associated with virtual assets. They should implement a risk-based approach, conduct customer due diligence (**CDD**) and enhanced CDD, obtain, hold and submit required originator and beneficiary information associated with the transfers of virtual assets, and have appropriate policies, procedures and controls in place.

VASPs must also adhere to the rules and guidance for correspondent banking and report suspicious transactions and breaches. As of July 1, 2023, specified businesses in Guernsey that have business relationships or occasional transactions involving virtual assets must follow the guidance set out for VASPs as well. The Handbook also provides example risk factors specific to virtual assets that should be considered by VASPs and specified businesses.

Are VASPs providing virtual asset services from offshore to persons in Guernsey subject to regulation in Guernsey?

Yes, VASPs providing virtual asset services from offshore to persons in Guernsey are subject to regulation in Guernsey under the LCF Law. All businesses that carry on VASP activities in or from within Guernsey and all Guernsey businesses that carry on VASP activities anywhere in the world will need a Part III VASP License unless an exemption applies. It is important to note that the outsourcing of VASP activities to a third party may, under certain circumstances, still require a Part III VASP License.

What are the main requirements for obtaining licensing / registration as a VASP in Guernsey?

VASPs seeking to operate in Guernsey are required to obtain a Part III VASP License from the GFSC. The following are the main requirements for obtaining licensing/registration as a VASP in Guernsey:

1. *Scope of VASP Activities*: VASPs in Guernsey must obtain a license for activities such as exchanging between virtual assets and fiat currencies, exchanging between different forms of virtual assets, transferring virtual assets, safe-keeping and/or administration of virtual assets, and participating in financial services related to the offer and sale of virtual assets.
2. *Application*: VASPs must submit an application for a Part III VASP License to the GFSC along with the prescribed fee. The application must include information regarding the VASP's financial commitments, business activities, and other relevant information.
3. *Assessment*: The GFSC will assess the application based on the minimum criteria for LCF Law, and any other relevant factors. The GFSC may grant or refuse the application for a license and may impose certain conditions that the VASP must comply with upon granting the license.
4. *Compliance with AML/CFT regime*: VASPs in Guernsey are required to adhere to the AML/CFT regime, aligning with FATF guidance on virtual assets.
5. *Regulatory substance requirements*: VASPs must comply with enhanced regulatory substance requirements, and services related to VASP activities cannot be outsourced without the consent of the GFSC.
6. *Financial resources and liquidity requirements*: Licensees are subject to financial resources and liquidity requirements agreed upon with the GFSC at the time of licensing, tailored to the nature of the VASP business and its risk profile.
7. *Corporate governance and management responsibilities*: VASPs must meet certain corporate governance and management responsibilities common to all licensed persons under the LCF Law, reflecting requirements under other regulatory laws.
8. *Physical presence*: VASPs must have a physical presence in Guernsey and appoint a local representative.
9. *Insurance*: VASPs must have appropriate insurance coverage in place.
10. *Fee structure*: VASPs must have a clear and transparent fee structure and provide customers with adequate disclosures regarding the risks associated with virtual assets.
11. *Complaints handling*: VASPs must have a complaint handling procedure in place and be a member of a dispute resolution scheme.
12. *Market abuse and insider trading*: VASPs must have appropriate policies and procedures in place to prevent market abuse and insider trading.
13. *Ongoing reporting*: VASPs must comply with any ongoing reporting requirements and cooperate with the GFSC in relation to any investigations or inquiries.

What are the main ongoing requirements for VASPs regulated in Guernsey?

The main ongoing requirements for VASPs regulated in Guernsey are as follows:

1. VASPs must comply with AML/CFT regulations under the anti-money laundering legislation in Guernsey, which now applies to such firms under the LCF Law.
2. All VASP activities carried out within Guernsey are subject to enhanced regulatory substance requirements and none of the services connected to the VASP may be outsourced to another jurisdiction without GFSC consent.
3. Licensees will be subject to liquidity and financial resources requirements which are agreed with the GFSC at the time of licensing, and will be required to have adequate internal controls in place.
4. Examples of additional conditions that may be imposed on a licensee could include the following: periodic reporting requirements, additional capital requirements, business restrictions, and others, depending on the nature and scale of the activities carried out.
5. VASPs are required to provide an Environmental Assessment, undertaken by the VASP as well as an independent expert regarding the environmental impact/ carbon emission from their use of consensus mechanisms, and details of their findings must be disclosed to the public annually.
6. Licensed VASPs in Guernsey are only permitted to provide VASP services to institutional and wholesale counterparties and are not allowed to provide VASP services to the retail public, including individuals that are regarded as high-net-worth individuals or those that would qualify as professional or sophisticated investors.

Licensees are prohibited from dealing in or trading virtual assets that aim to obscure the parties to the transaction or the flow of assets.

What are the main restrictions on VASPs in Guernsey?

The main restrictions on VASPs in Guernsey are:

1. *Retail customer ban*: VASPs are only permitted to provide services to institutional and wholesale counterparties and are not allowed to provide services to retail customers, including high net worth individuals or professional/sophisticated investors.
2. *Prohibition on obscuring transactions*: VASPs are prohibited from dealing in, trading in, or offering virtual assets or services that aim to obscure the parties to the transaction or the flow of assets.
3. *Enhanced regulatory substance requirements*: All VASP activities carried out within Guernsey are subject to enhanced regulatory substance requirements, including maintaining a physical presence and sufficient staff and infrastructure.
4. *Outsourcing restrictions*: VASPs cannot outsource any services connected to their VASP activities to another jurisdiction without the prior consent of the GFSC.

5. *Liquidity and financial resources requirements*: VASPs must maintain liquidity and financial resources agreed upon at the time of licensing.
6. *Environmental impact reporting*: VASPs must publish annual information about the environmental impact of consensus mechanisms of each virtual asset, including carbon emissions and resource consumption.
7. *Safekeeping of virtual assets*: If a VASP takes custody of customers' virtual assets, these must be recorded in the customer's name or their nominee's name, and the VASP cannot use these assets for lending or its own account without written consent.

What are the main information that VASPs have to make available to its customers?

VASPs operating in Guernsey are required to provide certain information to their customers to ensure transparency, compliance with regulatory requirements, and to maintain customer trust and confidence. The following are the main information that VASPs have to make available to their customers:

1. *Customer identification information*: VASPs are required to provide information on the customer's name and further identifiers, such as physical addresses, dates of birth, and identification numbers, as part of the customer identification process.
2. *Information on virtual asset services*: VASPs must disclose details about the virtual asset services they offer, including information on exchanges between different forms of virtual assets or between virtual assets and fiat currencies, transfers of virtual assets, safekeeping and administration of virtual assets, and other related activities.
3. *Policies, procedures, and controls*: VASPs should have appropriate policies, procedures, and controls in place to identify, understand, assess, and mitigate money laundering and terrorist financing risks associated with virtual asset activities. This includes having mechanisms to identify and report suspicious transactions, take freezing actions, and prohibit transactions with designated persons and entities.
4. *Record-keeping*: VASPs are required to securely and confidentially transmit information relating to the payment originator and the beneficiary when facilitating transactions. They must also maintain records associated with the transfers of virtual assets to identify and report suspicious transactions.
5. *Terms and conditions*: VASPs must provide their customers with clear and concise terms and conditions that outline the services they offer, fees and charges, and any other relevant information.
6. *Risks disclosure*: VASPs must provide their customers with adequate disclosures regarding the risks associated with virtual assets, including market volatility, cybersecurity risks, and the potential for fraud.
7. *Fees and charges*: VASPs must provide their customers with a clear and transparent fee structure that outlines all fees and charges associated with their services.
8. *Privacy policy*: VASPs must provide their customers with a privacy policy that outlines how their personal information will be collected, used, and protected.

9. *Complaints handling*: VASPs must provide their customers with a complaint handling procedure that outlines how complaints can be made and how they will be handled.
10. *AML/CFT policy*: VASPs must provide their customers with information regarding their AML/CFT policy and procedures, including customer due diligence requirements and suspicious activity reporting.
11. *Business continuity plan*: VASPs must provide their customers with information regarding their business continuity plan, which outlines how they will maintain operations in the event of a disruption or disaster.
12. *Insurance coverage*: VASPs must provide their customers with information regarding their insurance coverage, including any coverage for losses due to cyber-attacks or other incidents.
13. *Conflict of interest policy*: VASPs must provide their customers with information regarding their conflict-of-interest policy, which outlines how they will manage and disclose any potential conflicts of interest.
14. *Marketing materials*: VASPs must ensure that any marketing materials they provide to their customers are accurate, clear, and not misleading.

What market misconduct legislation/regulations apply to virtual assets?

Virtual asset market misconduct in Guernsey is regulated by several key pieces of legislation and regulations, primarily the LCF Law. The LCF Law regulates VASPs and brings Guernsey in line with international standards issued by the FATF.

Under the LCF Law, VASPs are required to comply with the Bailiwick's AML/CFT regime. The LCF Law also imposes certain prohibitions and requirements on VASPs, such as:

1. Prohibition from dealing in, trading in, or offering virtual assets or services that aim to obscure the parties to the transaction or the flow of assets;
2. prohibition from providing VASP services to retail customers, including high net worth individuals or professional/sophisticated investors;
3. enhanced regulatory substance requirements for all VASP activities carried out within Guernsey;
4. restrictions on outsourcing VASP activities to other jurisdictions without GFSC consent;
5. liquidity and financial resources requirements agreed upon at the time of licensing.

The GFSC takes a functional approach to determining whether VASP activities are carried out, focusing on the real and economic effect of the potential Licensee's business model and activities. This approach ensures that emerging products and services are appropriately aligned with FATF guidance on virtual assets.

In addition to the LCF Law, other market misconduct legislation and regulations that apply to virtual assets in Guernsey include the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Protection of Investors (Bailiwick of Guernsey) Law, 1987. These laws and regulations aim to prevent and detect misconduct in financial markets, including

insider dealing, market manipulation, and the dissemination of false or misleading information in relation to virtual assets.

4. Regulation of other crypto-related activities in Guernsey

Are managers of crypto funds regulated in Guernsey?

Yes, managers of crypto funds are regulated in Guernsey if they are carrying out activities that fall within the definition of a VASP under the LCF Law. The law requires that businesses that offer VASP services, including the management of crypto funds, must obtain a Part III VASP license from the GFSC, unless an exemption applies.

In addition, managers of crypto funds are also regulated under the PoI Law. The PoI Law requires managers of crypto funds to be licensed by the GFSC to conduct certain investment business activities in or from within Guernsey related to collective investment schemes and controlled investments. Managers of crypto funds must ensure that the fund is either authorised or registered by the GFSC under the rules applicable to the specific class of fund.

Licensees will be subject to liquidity and financial resources requirements, which are agreed with the GFSC at the time of licensing, and they will be required to have adequate internal controls in place. The GFSC oversees the compliance of managers of crypto funds with the PoI Law, ensuring adherence to regulatory requirements and investor protection.

Are distributors of virtual asset funds regulated in Guernsey?

Yes, distributors of virtual asset funds are regulated in Guernsey under the PoI Law and LCF Law.

Distributors must be licensed by the GFSC to conduct investment business activities related to collective investment schemes and controlled investments in or from within Guernsey. They must also ensure that the virtual asset fund they are distributing is either authorised or registered by the GFSC.

Authorised funds undergo a substantive review by the GFSC, while registered funds are approved following a representation by a Guernsey licensed administrator. Every open-ended Guernsey fund, including virtual asset funds, must appoint a Guernsey licensed custodian or trustee to safeguard the fund's assets.

If regulated as a VASP, distributors must comply with certain AML/CFT and regulatory requirements, such as implementing internal controls, policies, and procedures to manage risks effectively and undergoing annual audits. The GFSC oversees the compliance of distributors with the relevant laws and regulations, ensuring adherence to regulatory requirements and investor protection.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Guernsey?

Yes, intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Guernsey must be licensed by GFSC to conduct investment business activities related to virtual assets in or from within Guernsey. They are only permitted to provide virtual asset services to institutional and wholesale counterparties, and are prohibited from dealing in, trading in, or offering virtual assets or services that aim to obscure the parties to the transaction or the flow of assets.

Intermediaries must comply with Guernsey's AML/CFT regime, maintain liquidity and financial resources agreed upon at the time of licensing, and adhere to enhanced regulatory substance requirements, including maintaining a physical presence and sufficient staff and infrastructure. Outsourcing of any services connected to virtual asset activities to another jurisdiction requires prior consent of the GFSC. Non-compliance with these requirements may result in fines, imprisonment, or removal of directors or officers.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in Guernsey?

Upcoming regulatory developments in Guernsey regarding crypto-related activities are anticipated to address the evolving landscape of virtual assets and innovative finance. These developments may include:

1. *Introduction of Regulations for Emerging Crypto Products*: Guernsey may introduce specific regulations to address new crypto products and services, such as Security Token Offerings (**STOs**) or Decentralised Autonomous Organisations (**DAOs**), reflecting the jurisdiction's commitment to staying abreast of technological advancements in the crypto space.
2. *Alignment with Global Standards*: Guernsey actively engages in international discussions on crypto regulations and is likely to introduce changes to align with emerging global standards set by organisations like the FATF. This alignment could involve stricter AML/CFT requirements and tailored rules for ICOs.
3. *Focus on Environmental Impact Reporting*: VASPs will be required to publish annual information about the environmental impact of consensus mechanisms of each virtual asset, including carbon emissions and resource consumption. This regulatory requirement aims to enhance transparency and accountability in the virtual asset sector, reflecting Guernsey's commitment to sustainability and responsible practices in the crypto industry.

Has there been any notable events in Guernsey that has prompted regulatory change recently?

Guernsey has recently made some important changes to its regulations regarding financial services. These changes were made to bring the virtual assets regulations in line with international standards and to make them more consistent across different areas of finance.

The GFSC, which oversees the financial industry, has introduced new rules and guidelines for various types of financial activities. For example, there are now new rules for how funds are managed and sold, as well as new guidelines for how businesses should conduct themselves.

In addition, the GFSC has created new categories of roles for people who work in the financial industry. These roles, such as 'vetted supervised role' and 'approved supervised role', are designed to standardise the terminology used across different areas of finance.

The GFSC has also increased its power to enforce these new rules and regulations. It can now issue directions to businesses or individuals who are not following the rules, and it has greater authority to protect the public interest and the reputation of Guernsey as a financial center.

6. Pending litigation and judgments related to virtual assets in Guernsey (if any)

There are currently no pending litigations or judgments in Guernsey.

7. Government outlook on virtual assets and crypto-related activities in Guernsey

The government of Guernsey has adopted a progressive yet cautious approach towards virtual assets and crypto-related activities.

The LCF Law regulates VASPs in Guernsey, providing a comprehensive regulatory framework to ensure that virtual assets and virtual asset-related activities are conducted in a safe and transparent manner. The regulatory approach is forward-looking, with the GFSC taking a functional approach to determine if VASP activities are carried out, focusing on the real and economic effect of the business model.

However, the government has also imposed certain restrictions to mitigate risks associated with virtual assets. For instance, VASPs are prohibited from dealing in, trading in, or offering virtual assets or services that aim to obscure parties or the flow of assets. They can only provide services to institutional and wholesale counterparties, not retail customers. VASPs must also comply with Guernsey's AML/CFT regime and are subject to ongoing supervision by the GFSC.

Furthermore, Guernsey is positioning itself as a leading jurisdiction for responsible and compliant virtual asset activities by implementing a regulatory framework that prioritizes consumer protection, environmental sustainability, and alignment with international

standards. VASPs are required to publish annual information on the environmental impact of consensus mechanisms used, including carbon emissions and resource consumption, reflecting Guernsey's focus on sustainability.

8. Advantages of setting up a VASP in Guernsey

Guernsey offers several advantages for those interested in setting up a VASP in the jurisdiction. One of the key benefits is the highly respected regulatory environment, with the GFSC responsible for regulating all financial activities in Guernsey, including the regulation of VASPs. The GFSC is known for its thoroughness in regulatory procedures, promoting sound and stable financial practices. This provides businesses with a high level of legal certainty when conducting virtual asset-related activities in the jurisdiction.

Another advantage of setting up a VASP in Guernsey is its strategic location between the UK and continental Europe, making it an ideal location for businesses looking to tap into both European and UK markets. The jurisdiction also has a stable political environment, which is widely regarded as being conducive to business, and a highly developed infrastructure with modern telecommunications, high-speed internet access, and other amenities attractive to businesses.

Guernsey has a comprehensive legal system based on the English common law system, providing businesses with a high level of legal certainty. The Guernsey courts are well-regarded for their impartiality, efficiency, and accessibility, and there is a wealth of experienced legal professionals available to offer advice and assistance to businesses operating in the jurisdiction.

Additionally, Guernsey has a competitive tax environment, with no capital gains tax, inheritance tax, or VAT, making it an attractive location for businesses seeking to establish a VASP and conduct virtual asset-related activities in a tax-efficient manner.

May 2024

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Jersey

1. Virtual asset laws and regulations in Jersey

Jersey became one of the first global jurisdictions to regulate virtual currency exchanges in 2016. In 2017, following the boom in initial coin offerings, the regulator, the Jersey Financial Services Commission (**JFSC**), issued Initial Coin Offerings (**ICO**) Guidance, which welcomes token launches with a governance structure, while considering consumer protection and anti-money laundering measures.

As of now, Jersey has a comprehensive regulatory framework for virtual assets. Any business operating in the virtual currency sphere in Jersey is required to adhere to the anti-money laundering (**AML**) and countering financing of terrorism (**CFT**) laws. This includes registering with the JFSC and complying with its AML/CFT Handbook. Moreover, Jersey has also introduced a new class of permit for virtual currency exchanges, which allows them to operate under the supervision of the JFSC. This permit ensures that virtual currency exchanges meet strict AML/CFT requirements and maintain appropriate safeguards to protect their clients' assets.

Businesses in Jersey's virtual assets sphere must have appropriately skilled staff, including a Money Laundering Reporting Officer (**MLRO**) and Deputy MLRO, along with compliance and oversight personnel.

In May 2023, Jersey welcomed the ETP program for digital asset manager Valour, followed by the first digital assets investment business license for digital assets trading firm Elwood in July 2023.

What is considered a virtual asset in Jersey?

The JFSC has published a guidance note titled “ICOs, Virtual Currencies and Related Services". In this document, the JFSC defines a virtual currency as "a digital representation

of value that can be digitally traded and functions as a medium of exchange, a unit of account or a store of value but does not have legal tender status in any jurisdiction."

Furthermore, the JFSC uses the term "virtual asset" to encompass a broader range of digital assets, including virtual currencies, utility tokens, security tokens, and other forms of digital assets.

However, the JFSC has clarified that not all uses of distributed ledger technology (**DLT**) will involve virtual assets. For example, the use of DLT for record-keeping purposes may not involve the creation or transfer of a virtual asset.

The JFSC assesses each case on its own merits and considers various factors, including the specific features of the digital asset and the way it is used, to determine whether it falls within the regulatory framework for virtual assets.

What are the relevant laws and regulations?

In Jersey, the regulation of virtual assets is incorporated within the island's existing financial services legislation and its Anti-Money Laundering (**AML**)/Combatting Financial Crime/ Countering Proliferation Financing (**CPF**) regime. However, Jersey has chosen not to introduce crypto-specific legislation.

The following laws and regulations are relevant to virtual assets in Jersey:

1. Financial Services (Jersey) Law 1998: This law regulates financial services activities in Jersey and requires businesses carrying out certain activities to obtain a registration or license from the JFSC. In 2016, the JFSC clarified that virtual currency exchanges fall under this law, and thus, they must be registered as money service businesses.
2. Proceeds of Crime (Jersey) Law 1999: The primary objective of this law is to prevent and detect money laundering and the financing of terrorism. It imposes obligations on businesses dealing with virtual assets, such as customer due diligence, record-keeping, and reporting suspicious transactions to the Jersey Financial Crimes Unit (**JFCU**).
3. Virtual Currency Exchange Regulations: In 2016, the JFSC introduced specific regulations for virtual currency exchanges operating in Jersey. These regulations require exchanges to comply with AML/CFT measures, maintain adequate systems and controls, and have appropriate governance arrangements in place.
4. Initial Coin Offerings (ICOs) Guidance Note: In 2017, the JFSC issued a guidance note on ICOs, clarifying the regulatory treatment of token sales in Jersey. The note emphasises that the JFSC will assess each ICO on a case-by-case basis and that, depending on the nature of the tokens issued, an ICO may fall under existing financial services regulations.
5. Amendments to the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008: In 2020, Jersey amended this law to include virtual asset service providers (**VASPs**) as a supervised sector, bringing them under the purview of the JFSC. This amendment requires VASPs to comply with AML/CFT obligations and register with the JFSC.
6. Sound Business Practice Policy: The purpose is to protect Jersey's reputation as a financial services jurisdiction. The JFSC considers any involvement by a Jersey-based

company in token issuances, crypto exchanges, and provision of services related to cryptocurrencies as a "sensitive activity" subject to greater scrutiny from the JFSC.

Who do such laws and regulations apply to?

The laws and regulations regarding virtual asset service providers apply to natural or legal persons or arrangements that conduct one or more of the following activities or operations on behalf of another natural or legal person or arrangement:

1. exchange between virtual assets and fiat currencies;
2. exchange between one or more forms of virtual assets;
3. transfer of virtual assets;
4. safekeeping or administration of virtual assets or instruments enabling control over virtual assets; and
5. participation in and provision of financial services related to an issuer's offer and or sale of a virtual asset.

Additionally, VASPs operating in or from within Jersey are required to register with the Jersey Financial Services Commission for anti-money laundering, countering the financing of terrorism, and countering proliferation financing purposes.

Who are the relevant regulatory authorities in relation to virtual assets in Jersey?

In Jersey, the relevant regulatory authority for virtual assets is the Jersey Financial Services Commission. The JFSC is responsible for the supervision, regulation, and development of the financial services industry in Jersey, including the regulation of virtual assets.

The JFSC's role includes:

1. *Setting out regulatory policies and guidelines*: The JFSC publishes guidance notes and other documents to provide clarity on how virtual assets are regulated in Jersey. This includes issuing guidance and permits for virtual currency exchanges.
2. *Registration and permits*: Businesses operating in the virtual assets sphere in Jersey are required to register with the JFSC and obtain any necessary licenses or permits. This includes the new class of permit for virtual currency exchanges.
3. *Supervision and enforcement*: The JFSC supervises regulated entities to ensure compliance with Jersey's AML/CFT laws, as well as other regulatory requirements. The JFSC also has the power to take enforcement action against entities that breach these requirements.
4. *Setting standards for compliance and oversight*: The JFSC sets standards for compliance and oversight within the virtual assets industry. This includes requiring businesses to have appropriately skilled and experienced individuals, such as a designated MLRO and Deputy MLRO, as well as individuals responsible for compliance and oversight.

International cooperation: The JFSC works with other regulatory authorities and international bodies to share information and promote cooperation in the regulation of virtual assets.

What are the penalties for breaches of virtual asset laws and regulations in Jersey?

Breaches of virtual asset laws and regulations in Jersey can result in various penalties, depending on the nature and severity of the violation. Some potential penalties, derived from the relevant legislations, include:

1. *Financial penalties*: The JFSC has the power to impose financial penalties on businesses or individuals found to be in breach of the relevant laws and regulations, as given in the Financial Services Commission (Jersey) Law 1998 (Article 16) and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (Article 19). The amount of the penalty will depend on the circumstances of the case, but it can be substantial.
2. *Criminal prosecution*: In some cases, breaches of virtual asset laws and regulations may constitute criminal offenses, leading to prosecution under the Proceeds of Crime (Jersey) Law 1999 (Articles 43-45). Convictions can result in fines, imprisonment, or both. For example, failure to comply with AML/CFT obligations can lead to criminal sanctions.
3. *Regulatory sanctions*: The JFSC may also impose regulatory sanctions on businesses or individuals found to be in breach of the relevant laws and regulations, as outlined in the Financial Services Commission (Jersey) Law 1998 (Articles 15-18). These sanctions can include public censure, restrictions on business activities, or suspension or revocation of licenses or registrations.

2. Regulation of virtual assets and offerings of virtual assets in Jersey

Are virtual assets classified as 'securities' or other regulated financial instruments in Jersey?

In Jersey, virtual assets are not automatically considered 'securities' or other regulated financial instruments. The JFSC looks at each virtual asset on a case-by-case basis to determine if it falls under existing regulatory frameworks, such as the Financial Services (Jersey) Law 1998 and the Collective Investment Funds (Jersey) Law 1988, as given in the JFSC Guidance Note on Initial Coin Offerings, Virtual Currencies and Related Services, and the JFSC Statement on Virtual Currencies.

The JFSC considers various factors to assess the nature and function of a virtual asset, such as its purpose, structure, underlying technology, rights and obligations attached to it, and the way it is used and traded.

Based on this assessment, a virtual asset may be classified as a security or another type of regulated financial instrument if it meets the relevant criteria. For instance, a virtual asset may be considered a security if it represents an ownership interest in a company, a debt

instrument, or a derivative. Similarly, a virtual asset may be considered a collective investment fund if it pools investor funds for the purpose of collective investment and meets certain other criteria, as explained in the JFSC Guidance Note on Initial Coin Offerings, Virtual Currencies and Related Services.

However, it's important to note that cryptocurrencies, in and of themselves, are not considered to be 'investments' under the Financial Services (Jersey) Law 1998, according to the JFSC Statement on Virtual Currencies. Therefore, provisions relating to investment exchanges do not apply to cryptocurrency businesses in Jersey, and such businesses are not required to apply for an investment business license.

Despite this, businesses operating in the virtual assets sphere in Jersey are required to comply with Jersey's AML/CFT laws, as well as other regulatory requirements. This includes obtaining any necessary permits or licenses from the JFSC and complying with ongoing regulatory obligations, as stated in the JFSC Guidance Note on Initial Coin Offerings, Virtual Currencies and Related Services.

Are stablecoins and NFTs regulated in Jersey?

In Jersey, the regulation of stablecoins and non-fungible tokens (**NFTs**) depends on their specific characteristics and the purposes for which they are used. The JFSC takes a technology-neutral and principles-based approach to regulation, focusing on the underlying activities and risks associated with these digital assets.

Stablecoins: Stablecoins are digital assets designed to maintain a stable value by pegging their value to a reserve asset, such as a fiat currency, commodity, or another cryptocurrency. The JFSC assesses stablecoins on a case-by-case basis to determine whether they fall under existing financial services regulations.

If a stablecoin is considered a security or a collective investment fund under Jersey law, it will be subject to the relevant regulatory framework, such as the Collective Investment Funds (Jersey) Law 1988 or the Financial Services (Jersey) Law 1998. Issuers, custodians, and service providers may need to obtain the appropriate licenses or registrations from the JFSC.

In addition, stablecoin issuers and service providers must comply with Jersey's AML/CFT regulations, as explained in the Proceeds of Crime (Jersey) Law 1999 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

*Non-Fungible Tokens (**NFTs**)*: NFTs are unique digital assets that represent ownership or proof of authenticity of an item or piece of content, such as art, collectibles, or in-game items. As with stablecoins, the JFSC assesses NFTs on a case-by-case basis to determine whether they fall under existing financial services regulations.

If an NFT is considered a security or a collective investment fund under Jersey law, it will be subject to the relevant regulatory framework, such as the Collective Investment Funds (Jersey) Law 1988 or the Financial Services (Jersey) Law 1998. Issuers, custodians, and service providers may need to obtain the appropriate licenses or registrations from the JFSC.

However, many NFTs may not fall under existing financial services regulations if they do not exhibit characteristics of securities or collective investment funds. In such cases, they may

not be subject to specific regulation beyond general consumer protection and AML/CFT requirements.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Jersey?

The regulatory landscape surrounding DeFi activities in Jersey is currently evolving, with the JFSC adopting a risk-based approach to regulating virtual assets, including DeFi. This approach focuses on regulating activities that pose a higher risk while allowing for innovation in lower-risk areas.

The existing regulatory framework in Jersey primarily applies to traditional financial services. DeFi activities that fall under the definition of these services, such as operating a virtual asset exchange, providing custody services, or offering payment services, would likely need to be registered with the JFSC. These activities may be subject to regulation under the Financial Services (Jersey) Law 1998, unless an exemption applies.

There are currently no specific regulations in Jersey that directly target DeFi lending or other DeFi activities. However, the JFSC may consider these activities under existing frameworks, depending on the specific nature of the service. The JFSC assesses DeFi activities on a case-by-case basis to determine whether they are subject to regulation.

For example, if a DeFi lending platform involves the offering of financial services, such as deposits, loans, or investment advice, it may be subject to the Financial Services (Jersey) Law 1998. In such cases, the platform's operators may need to obtain the appropriate licenses or registrations from the JFSC.

Furthermore, DeFi activities involving virtual assets may be subject to Jersey's AML/CFT regulations. The Proceeds of Crime (Jersey) Law 1999 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 require businesses and individuals engaged in certain activities, including virtual asset service providers, to comply with AML/CFT obligations.

Are there any restrictions on issuing or publicly offering virtual assets in Jersey?

In Jersey, there are various regulations and restrictions surrounding the issuing and public offering of virtual assets. While most ICOs are not directly regulated by the JFSC, issuers of ICOs must take certain steps to remain compliant with the guidance note (The application process for issuers of ICO) and other regulations, for instance:

1. *Incorporation as a Jersey company*: According to the JFSC, issuers of ICOs need to be incorporated as a Jersey company and administered through a trust and company service provider (**TCSP**) licensed by the JFSC.
2. *COBO Consent*: Any issuer of an ICO must obtain a COBO (Control of Borrowing) consent under the statutory instrument governing the raising of capital, which allows the JFSC to place certain conditions on the issuer.

3. *Compliance with Sound Business Practice Policy*: ICO issuers must comply with the JFSC's Sound Business Practice policy. The JFSC places greater emphasis on the management of AML/CFT risks in the token issuance process.
4. *AML/CFT Requirements*: The issuer must apply relevant AML/CFT requirements to ICO purchasers or sellers and appoint and maintain a TCSP.
5. *Jersey resident director*: The issuer must appoint and maintain a Jersey resident director, an officer of the TCSP appointed by the issuer, who is a natural person and also a principal person of that business pursuant to the Financial Services (Jersey) Law 1998.
6. *Ongoing audit requirement*: The issuer must be subject to an ongoing audit requirement.
7. *Risk mitigation measures*: The issuer must have procedures and processes in place to mitigate and manage the risk of retail investors investing inappropriately in the ICO and ensure retail investors understand the risks involved.
8. *Information Memorandum*: The issuer must prepare and submit to the JFSC an Information Memorandum (which may be in the form of a White Paper) which complies with certain content requirements required of a prospectus issued by a company under the Companies (Jersey) Law 1991.
9. *Review and update requirements*: The JFSC reviews and updates the guidance and JFSC ICO issuer requirements periodically where appropriate.
10. *Restrictions on marketing material*: The issuer is prohibited from directly or indirectly stating or implying that the issuer, or the coins or tokens issued by the issuer, are regulated by the JFSC. The issuer must also ensure that any written marketing material is clear, fair, and not misleading.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in the Jersey?

There are two main exemptions available for issuers to offer virtual assets:

1. *Professional client's exemption*: This exemption applies when the offer is limited to "professional clients" or high net worth clients, as defined by the JFSC Conduct of Business Code. Issuers can offer virtual assets to a more sophisticated clientele with fewer regulatory requirements under this exemption.
2. *Limited offer exemption*: This exemption is available if the offer is limited to fewer than 50 clients in Jersey over a 12-month period, and those clients are not professional clients or high net worth individuals. This exemption allows for smaller-scale offerings to non-professional clients without triggering the full set of regulatory requirements.

However, the JFSC closely regulates virtual asset offers to retail clients who are not professional clients or high net worth individuals. Retail client offers must comply with all the regulatory requirements prescribed by the JFSC, which may include obtaining necessary approvals, preparing a prospectus, and adhering to investor protection measures.

Regardless of any exemptions, issuers and service providers must still comply with Jersey's AML/CFT regulations. These regulations are explained in the Proceeds of Crime (Jersey) Law 1999 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, and they apply to all virtual asset activities.

3. Regulation of VASPs in Jersey

Are VASPs operating in Jersey subject to regulation?

VASPs operating in Jersey are subject to regulation to ensure compliance with AML/CFT requirements. The JFSC takes a proactive approach to regulating virtual assets and VASP activities.

In 2020, Jersey amended the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 to include VASPs as a supervised sector under the JFSC's remit. This amendment brought VASPs within the scope of Jersey's AML/CFT regulatory framework, requiring them to comply with the same obligations as other financial service providers.

VASPs operating in Jersey must register with the JFSC and adhere to the AML/CFT obligations set out in the Proceeds of Crime (Jersey) Law 1999 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008. These obligations include conducting customer due diligence, monitoring transactions, reporting suspicious activities, and maintaining adequate records.

If a VASP carries out activities in or from within Jersey, they are required to register with the JFSC, which will be treated as a new application.

In addition to AML/CFT requirements, VASPs may also be subject to other regulatory requirements depending on the specific services they offer. For example, if a VASP operates a virtual asset exchange or provides custody services, it may need to be registered with the JFSC under the Financial Services (Jersey) Law 1998.

Are VASPs providing virtual asset services from offshore to persons in the Jersey subject to regulation in Jersey?

Yes, VASPs providing services from offshore to persons in Jersey are considered as 'carrying out activities in or from within Jersey' and are therefore subject to regulation in Jersey. Therefore, they need to register with the JFSC for AML/CFT and countering proliferation financing purposes.

However, each case is assessed individually, and the specific circumstances will determine whether a VASP providing services from offshore to persons in Jersey will be subject to regulation. The JFSC takes a risk-based approach to regulating virtual assets and VASPs, focusing on the substance of the activities rather than their location.

What are the main requirements for obtaining licensing / registration as a VASP in Jersey?

Businesses seeking to obtain licensing or registration as a VASP in Jersey must comply with specific requirements under the Financial Services (Jersey) Law and other relevant regulations. These requirements include:

1. *Application*: Submit a completed application form to the JFSC, providing detailed information about the VASP, its beneficial owners, directors, and key personnel. The application should also include a comprehensive business plan outlining the nature of the virtual asset services to be provided and the target market.
2. *Categorisation*: The JFSC's Guidance Note on Virtual Currencies, ICOs and Related Services states that the business must fall within certain categories of the Financial Services (Jersey) Law and conduct specific activities for or on behalf of other persons. These activities must be carried out from or within Jersey 'by way of business' to be subject to Jersey's AML/CFT/CPF regime.
3. *'By Way of Business' Test*: As per the JFSC's Guidance Note on Virtual Currencies, ICOs and Related Services, the business must publicly offer to conduct VASP activities for other persons to meet this test. This involves demonstrating that the services are provided commercially, regularly, and with a view to profit.
4. *Money Laundering Compliance Officer (**MLCO**) and Money Laundering Reporting Officer (**MLRO**)*: The JFSC's AML/CFT Handbook for Financial Services Businesses mandates that the business must appoint an MLCO and an MLRO to oversee and manage its AML/CFT efforts.
5. *AML/CFT Compliance*: VASPs must demonstrate compliance with Jersey's AML/CFT requirements. This includes implementing robust AML/CFT policies and procedures, conducting customer due diligence, monitoring transactions, and reporting suspicious activities to the JFCU.
6. *Policies and Procedures*: In accordance with the Money Laundering (Jersey) Order 2008 and the JFSC's AML/CFT Handbook for Financial Services Businesses, the business must maintain comprehensive policies and procedures to prevent and detect money laundering in respect of their VASP activities.
7. *Fitness and Propriety*: The JFSC assesses the fitness and propriety of the VASP's beneficial owners, directors, and key personnel. This assessment includes evaluating their integrity, competence, and financial soundness. Applicants may need to provide police clearance certificates, professional references, and financial statements as part of this process.
8. *Risk Management*: VASPs are required to establish and maintain effective risk management systems and controls to identify, assess, and manage potential risks associated with their virtual asset services. This includes implementing appropriate information security measures to protect client data and assets.

9. *Corporate Governance*: VASPs must have a sound corporate governance structure in place, with clear lines of responsibility and accountability. This includes appointing a minimum of two Jersey-resident directors and maintaining a registered office in Jersey.
10. *Capital Adequacy*: VASPs must maintain sufficient financial resources to cover their operational costs and potential liabilities. The JFSC may require VASPs to hold a minimum level of regulatory capital, depending on the nature and scale of their activities.
11. *Insurance*: VASPs may be required to maintain adequate insurance coverage to protect against potential risks and liabilities, such as professional indemnity and cyber insurance.
12. *Audit and Reporting*: VASPs must appoint an external auditor to conduct annual audits of their financial statements and AML/CFT compliance. They are also required to submit regular reports to the JFSC, including financial statements, compliance reports, and any significant changes to their business or operations.
13. *Ongoing Compliance*: VASPs must comply with all relevant laws, regulations, and regulatory guidelines issued by the JFSC. This includes adhering to any specific conditions or restrictions imposed on their registration or license.

The licensing fees for VASPs in Jersey for operating a virtual assets business involve an Application Fee of approximately £1,000.00 and a Registration Fee that varies based on factors like the type of virtual asset services provided, the nature, size, and complexity of the services. The Registration Fee can range between £1,000 and £15,000.

What are the main ongoing requirements for VASPs regulated in Jersey?

According to the JFSC, guidance notes, and regulatory framework, VASPs regulated in Jersey must adhere to several ongoing requirements to maintain their registration. These main ongoing requirements include:

1. *Compliance with AML/CFT regulations*: VASPs must continually adhere to Jersey's AML/CFT regulations, as outlined in the Proceeds of Crime (Jersey) Law 1999 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008. This includes conducting customer due diligence, monitoring transactions, and reporting suspicious activities.
2. *Maintenance of effective risk management systems*: The JFSC requires VASPs to maintain risk management systems and controls to identify, assess, and manage potential risks associated with their virtual asset services.
3. *Regular reporting*: VASPs must submit regular reports to the JFSC, detailing their activities, financial performance, and compliance with relevant regulations. This may include annual reports, financial statements, and other specific reports requested by the JFSC.
4. *Maintaining adequate records*: VASPs are required to keep accurate and up-to-date records of their clients, transactions, and internal policies and procedures, in accordance with Jersey's regulatory requirements.

5. *Ongoing collaboration with the JFSC*: Regulated VASPs must maintain open lines of communication with the JFSC and promptly inform the commission of any significant changes to their business, such as changes in ownership, key personnel, or the nature of their services.
6. *Annual audit*: VASPs are required to undergo an annual audit by an independent auditor to assess their compliance with AML/CFT regulations and other relevant requirements.

What are the main restrictions on VASPs in Jersey?

Jersey does not impose any specific restrictions on VASPs as such. However, VASPs fall under the purview of the Financial Services (Jersey) Law along with other financial service providers. This means that they may need to adhere to certain requirements, which can include licensing and regulatory approvals for certain types of businesses, such as investment businesses.

Furthermore, the main restrictions on VASPs in Jersey include:

1. *Registration requirement*: VASPs must be registered with the JFSC and obtain approval before offering their services in or from Jersey. This ensures that they are subject to the regulatory oversight and AML/CFT regime.
2. *Scope of services*: VASPs may be restricted in the types of virtual asset services they can offer, depending on their registration and approval from the JFSC. For example, a VASP may be authorised to provide virtual asset exchange services but not custody services.
3. *AML/CFT compliance*: VASPs are restricted from engaging in activities that do not comply with Jersey's AML/CFT regulations. They must implement AML/CFT policies and procedures, conduct customer due diligence, monitor transactions, and report suspicious activities.
4. *Customer restrictions*: VASPs may be subject to restrictions on the types of clients they can serve, depending on their registration and approval from the JFSC. For instance, they may be restricted from offering services to retail clients who are not professional clients or high net worth individuals, as these clients would need to comply with all the regulatory requirements prescribed by the JFSC.
5. *Risk management*: VASPs must implement and maintain effective risk management systems and controls to identify, assess, and manage potential risks associated with their virtual asset services. This may restrict them from engaging in activities that pose an unacceptable level of risk.
6. *Regulatory compliance*: VASPs are required to comply with all relevant laws, regulations, and regulatory guidelines issued by the JFSC. This includes adhering to any specific conditions or restrictions imposed on their registration or license.

What are the main information that VASPs have to make available to its customers?

VASPs operating in Jersey are required to provide certain information to their customers to ensure transparency and promote informed decision-making. According to the JFSC's Guidance Note on Virtual Currencies, ICOs and Related Services, VASPs must provide customers with information about the risks associated with virtual assets and the services they offer, including the potential for financial loss, market volatility, and operational risks.

The JFSC's Data Protection Guidance suggests that VASPs should provide customers with a clear and concise privacy policy that explains how their personal information will be collected, used, stored, and protected in accordance with Jersey's data protection laws.

As per the JFSC's AML/CFT Handbook for Financial Services Businesses, VASPs must inform customers about their AML/CFT policies and procedures, including customer due diligence requirements and the obligation to report suspicious activities.

The JFSC's Conduct of Business Code also states that VASPs should provide customers with a clear and accessible complaint handling procedure, including information on how to submit a complaint and the timeframes for resolution.

Lastly, the JFSC's Conduct of Business Code requires VASPs to disclose any actual or potential conflicts of interest that may arise in the course of providing their services and have policies and procedures in place to manage and mitigate these conflicts.

What market misconduct legislation/regulations apply to virtual assets?

Market misconduct legislation and regulations that apply to virtual assets in Jersey can be derived from various sources, as there is no specific legislation targeted solely at virtual assets. Instead, the existing regulatory framework is applied to virtual assets in a technology-neutral manner. Some key pieces of legislation and regulations that may apply to virtual assets include:

1. *Financial Services (Jersey) Law 1998*: Any person carrying on a financial service business in or from within Jersey must be registered with the JFSC. Depending on the nature of the virtual asset activities, they may fall under the scope of this law, and the relevant market misconduct provisions would apply.
2. *Proceeds of Crime (Jersey) Law 1999*: This law establishes Jersey's AML/CFT regime. VASPs are considered financial service providers and must comply with AML/CFT obligations, which can help prevent market misconduct related to money laundering and terrorist financing.
3. *Insider Dealing and Market Abuse Provisions*: Part 3A of Financial Services (Jersey) Law 1998 law prohibits insider dealing and market manipulation in relation to qualifying investments. These provisions closely follow the UK's Criminal Justice Act 1993 and Financial Services and Markets Act 2000. While virtual assets may not be explicitly mentioned, these provisions could potentially apply to virtual assets if they are considered qualifying investments. The JFSC has the power to investigate and take

enforcement action against market misconduct related to insider dealing and market manipulation under this law.

4. *Common law and other applicable legislation*: In addition to specific regulations, general principles of Jersey law, such as those related to fraud, misrepresentation, and breach of trust, may apply to virtual assets and help address market misconduct in the virtual asset space.

4. Regulation of other crypto-related activities in Jersey

Are managers of crypto funds regulated in Jersey?

In 2016, the JFSC published guidance notes on virtual currencies, which clarified that virtual currency exchanges and other virtual currency businesses operating in Jersey may be subject to regulatory requirements under the AML/CFT regime. However, the guidance notes did not specifically address the regulation of crypto fund managers.

In 2018, the JFSC issued a consultation paper on proposals to enhance Jersey's regulatory framework for virtual currency exchange businesses. The said paper also touched upon the regulation of crypto fund managers, proposing that they be subject to the same regulatory requirements as traditional fund managers.

In 2019, the JFSC published a revised version of its Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism, which included guidance on the application of AML/CFT requirements to virtual currency businesses, including crypto fund managers.

As of now, crypto fund managers operating in Jersey are required to obtain a fund services business license and comply with AML/CFT requirements. They are also subject to ongoing supervision by the JFSC.

Are distributors of virtual asset funds regulated in Jersey?

In Jersey, the regulation of virtual asset fund distributors falls under the jurisdiction of the JFSC. These distributors are mandated to obtain a fund services business license and adhere to AML/CFT requirements. Supervision by the JFSC is continuous to ensure ongoing compliance. Moreover, the JFSC has issued comprehensive guidance explaining the regulatory framework for the marketing and distribution of virtual asset funds within Jersey. This guidance describes the regulatory obligations for distributors, providing clarity and direction. The details on regulatory requirements for virtual asset fund distributors in Jersey can be found in the JFSC's guidance notes, revised Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism, and guidance on the marketing and distribution of virtual asset funds.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Jersey?

Yes, there are requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Jersey.

According to the JFSC's guidance notes on virtual currencies, any intermediary that is carrying on a virtual currency exchange business in or from Jersey is required to comply with the AML/CFT regime. This includes obtaining a registration or a permit from the JFSC, depending on the nature and scale of the business.

In addition, intermediaries that provide investment advice on virtual assets may be subject to regulation under Jersey's financial services regulatory framework. The JFSC has issued guidance notes on the regulation of investment business, which sets out the regulatory requirements for intermediaries that provide investment advice or manage investments for clients.

Intermediaries that provide trading in virtual assets for clients may also be subject to regulation under Jersey's financial services regulatory framework. The JFSC has issued guidance on the regulation of investment business, which sets out the regulatory requirements for intermediaries that deal in investments as principal or agent.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in Jersey?

Jersey's current framework treats most crypto activities as "sensitive activities" under the Sound Business Practice Policy. There might be future developments to provide more specific regulations for different types of crypto businesses.

Jersey also plans to make legislative changes to strengthen their anti-money laundering and counter-terrorism financing regime.

Has there been any notable events in Jersey that has prompted regulatory change recently?

Yes, there have been recent events in Jersey's virtual assets industry which have led to regulatory changes. The FTX crash in November 2022 and lawsuits against some of the world's largest crypto exchanges, like Binance and Coinbase, impacted the global virtual assets industry negatively. Despite this, Jersey remains a crypto-friendly jurisdiction.

There has been an increase in digital asset exchange trade products in Jersey in 2023, and in May 2023, the digital assets manager Valour launched an ETP program in Jersey. In July 2023, the JFSC approved the first digital assets investment business license for trading firm, Elwood. These events have contributed to regulatory changes in Jersey, such as the

introduction of the VASP regime in Jersey's anti-money laundering framework to cover virtual asset service providers. Jersey implemented the FATF's VASP Guidelines in early 2023, bringing VASPs under its AML/CFT framework. We can expect Jersey to continue refining its AML/CFT regulations to address evolving risks in the crypto space.

6. Pending litigation and judgments related to virtual assets in Jersey (if any)

There are currently no pending litigations or judgments in Jersey.

7. Government outlook on virtual assets and crypto-related activities in Jersey

Jersey has chosen not to introduce crypto-specific legislation and instead incorporates the regulation of virtual assets within the existing financial services legislation and AML/CFT/CPF regime. This demonstrates the government's commitment to creating a regulatory framework that is both comprehensive and can adapt to new technologies without creating an unnecessary regulatory burden on businesses.

Jersey became one of the first global jurisdictions to regulate virtual currency exchanges in 2016, and in 2017, the JFSC issued ICO Guidance that welcomes token launches with a governance structure while considering consumer protection and anti-money laundering measures.

Any business operating in the virtual currency sphere in Jersey is required to adhere to the AML/CFT laws which include registering with the JFSC and complying with its AML/CFT Handbook.

Despite this, the regulatory landscape surrounding DeFi activities in Jersey is evolving, with the JFSC adopting a risk-based approach to regulating virtual assets, including DeFi. This approach focuses on regulating activities that pose a higher risk while allowing for innovation in lower-risk areas. It is also worth noting that in May 2023, Jersey welcomed the ETP program for digital asset manager Valour, followed by the first digital assets investment business license for digital assets trading firm Elwood in July 2023.

8. Advantages of setting up a VASP in Jersey

Setting up a VASP in Jersey offers several advantages due to its well-established financial sector, regulatory framework, and business-friendly environment. Here are some key advantages:

1. *Clear regulatory framework*: Jersey has a clear and comprehensive regulatory framework for VASPs, which provides businesses with a high degree of certainty and clarity regarding their obligations and responsibilities. This helps to create a stable and secure environment for VASPs to operate.

2. *Reputation*: Jersey is known for its strong reputation as a well-regulated international finance center, with a focus on transparency, compliance, and adherence to international standards. This can enhance the credibility of VASPs operating from Jersey and help them build trust with clients and partners.
3. *Access to a skilled workforce*: Jersey's finance industry has a deep pool of skilled professionals with expertise in areas such as compliance, risk management, and financial technology. This can make it easier for VASPs to find and hire the talent they need to grow and succeed.
4. *Business-friendly environment*: Jersey offers a business-friendly environment, with a competitive tax regime, modern infrastructure, and a responsive government. This can help VASPs to minimise their operational costs and focus on growing their businesses.
5. *Proximity to major markets*: Jersey's location between the UK and Europe provides VASPs with easy access to major financial markets, enabling them to serve clients across multiple jurisdictions and tap into new growth opportunities.
6. *Strong focus on AML/CFT compliance*: Jersey's AML/CFT regime can help VASPs to demonstrate their commitment to compliance and build trust with clients, partners, and regulators.

April 2024

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Malta

1. Virtual asset laws and regulations in Malta

In late 2017, Malta initiated discussions on regulating virtual assets through consultation papers issued by the Malta Financial Services Authority (**MFSA**). This effort eventually led to the enactment of the Virtual Financial Assets Act (**VFAA**) in November 2018. The Act focuses on initial virtual financial asset offerings and virtual financial assets, and subsequent efforts include rulebooks for crypto-asset services providers (**CASPs**) and issuers. The Minor alignment of the Virtual Financial Assets Rules (**VFA Rules**) with Markets in Crypto-assets Regulation (**MiCAR**) by 2023 shows Malta's commitment to enhancing security and compliance for regulated CASPs.

What is considered a virtual asset in Malta?

In Malta, virtual assets are defined as 'virtual financial assets' (**VFAs**) which are of any digital medium that is used as an exchange unit or an account or store of value, but which is not considered electronic money, a financial instrument or a virtual token. This definition includes cryptocurrencies that can be considered as virtual financial assets. Cryptocurrencies like Bitcoin and Ethereum are digital assets that can be used as a medium of exchange or store of value, and as such, can fall under the definition of VFAs in Malta.

What are the relevant laws and regulations?

1. *The Virtual Financial Assets Act, 2018*: This is the primary legislation governing VFAs in Malta. The act defines the term VFA and sets out the regulatory framework for VFAs, including issuers, VFA agents, and VFA service providers. It also establishes the Malta Digital Innovation Authority (**MDIA**) as the regulatory body responsible for overseeing the VFA sector. The Act provides for the registration and licensing of VFA agents and service providers and prescribes the requirements for Initial VFA Offerings (**IVFAOs**).

2. *The Virtual Financial Assets Regulations, 2018 (Legal Notice 360 of 2018) (**VFAR**)*: These regulations provide more detailed rules and requirements for VFAs, including exemptions, fees, control of assets, and administrative procedures. They also set out the process for registering whitepapers for IVFAOs and the rules for asset segregation and custody.
3. *The VFA Rulebook*: This is a set of detailed rules and guidance issued by the MFSA under the Virtual Financial Assets Act and Regulations. The Rulebook provides further regulation applicable to VFAs and operators in the financial services sector, including VFA agents, IVFAOs, and VFA service providers. It provides guidance on compliance, governance, risk management, and other aspects of operating in the VFA sector.
4. *The Prevention of Money Laundering and Funding of Terrorism Regulations (**PMLFTR**), 2018 (Legal Notice 306 of 2018)*: These regulations apply to all operators in the financial services sector in Malta, including those dealing with VFAs. They set out the requirements for identifying and verifying customers, risk assessment, record-keeping, and reporting obligations for suspicious transactions. The PMLFTR also sets out the obligations of designated non-financial businesses and professions, which includes VFA service providers.
5. *Guidance Notes*: The MFSA has issued various guidance notes to provide further guidance on the interpretation and application of the Virtual Financial Assets Act, Regulations, and Rulebook. Some of these guidance notes cover topics like the registration of VFA agents, the process for whitepaper registration, and the determination of whether a VFA qualifies as electronic money.

Who do such laws and regulations apply to?

In Malta, virtual assets laws and regulations apply to issuers of virtual financial assets, VFA agents, licensees, and administrators.

According to the Virtual Financial Assets Regulations (Legal Notice 357 of 2018) of Malta, virtual assets laws and regulations apply to all natural and legal persons engaging in the provision of virtual financial asset services. More specifically, the definition of a "subject person" in the regulations includes anyone who provides or offers to provide a virtual financial asset service as well as anyone who holds himself out to be providing a service whether supervised or not. This includes custodians, brokerages, portfolio managers, exchange operators, wallet providers and financial advisors.

Who are the relevant regulatory authorities in relation to virtual assets in Malta?

1. *Malta Financial Services Authority (**MFSA**)* - The MFSA is the primary regulatory authority in Malta and is responsible for overseeing the implementation of the Virtual Financial Asset Act and Virtual Financial Asset Regulations. It also has the power to issue licenses to conduct virtual financial asset activities and to supervise license holders.
2. *Financial Intelligence Analysis Unit (**FIAU**)* - The FIAU is responsible for the prevention of money laundering and terrorism financing activities. It also plays a supervisory role in

relation to the enforcement of the due diligence obligations of license holders under the laws of Malta.

3. *Malta Digital Innovation Authority (**MDIA**)* - The MDIA was established to promote the development and innovation of digital technologies in Malta. It is responsible for the certification of Technology Service Providers that undergo a process of quality assurance and compliance assessment in accordance with Maltese law.

What are the penalties for breaches of virtual asset laws and regulations in Malta?

Under the Virtual Financial Assets Act in Malta, administrative penalties may be imposed for non-compliance with the provisions of the Act and regulations. Such penalties may include fines, the suspension or revocation of licenses, and the publication of details of the infringement. The amount of the fine imposed may not be less than €1,000 and may exceed €150,000 or 10% of the total annual turnover of the individual or legal person in the preceding year where the infringement is committed by a legal person.

Criminal sanctions may also apply in certain circumstances. Companies may be held vicariously liable for the non-compliant actions of their officers or employees. Additionally, repeat offenders will face higher sanctions which will be proportionate to the seriousness of the infringement.

2. Regulation of virtual assets and offerings of virtual assets in Malta

Are virtual assets classified as 'securities' or other regulated financial instruments in Malta?

According to the VFAA, a VFA is defined as "a form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value and that is not electronic money, a financial instrument or a virtual token. the Virtual Financial Assets Act does not explicitly classify all virtual assets as securities or other regulated financial instruments. Instead, it sets out requirements that virtual financial assets must meet if they are to be offered to the public or traded on a Distributed Ledger Technology (**DLT**) exchange.

The VFAA establishes the rules around IVFAOs and how virtual financial assets are regulated in Malta. It provides that if a virtual financial asset meets the criteria of a financial instrument or electronic money, the issuer shall comply with the respective applicable laws and regulations in Malta.

Regarding financial instruments, Malta has implemented the European Union's Markets in Financial Instruments Directive framework (**MiFID II**), which describes specific requirements for investment firms that provide investment services and activities. Malta has also enacted additional legislation such as the Investments Services Act (**ISA**) to regulate the offering of financial instruments.

Regarding electronic money, Malta has implemented the Electronic Money Directive (**EMD**) and has relevant provisions in the MFSA.

Therefore, issuers must comply with any applicable laws and regulations, including MiFID II, ISA, EMD, and the MFSA regulations, when issuing virtual financial assets, classified as financial instruments or electronic money.

In this way, virtual assets that meet the characteristics of securities or other regulated financial instruments in Malta may be subject to regulation as such. Still, virtual assets that do not meet these criteria may not be classified as securities or regulated financial instruments. Therefore, it is up to the issuer and its VFA agent to determine whether a particular asset will be classified as a financial instrument or electronic money, and if so, to ensure compliance with the applicable laws and regulations in Malta.

Are stablecoins and NFTs regulated in Malta?

Stablecoins: stablecoins are regulated in Malta under the VFAA, which provides for the regulation of any virtual financial asset, including stablecoins. Stablecoins are regarded as Electronic Money under the Act subject to certain criteria being met. However, not all stablecoins are necessarily considered VFAs. They may be classified as financial instruments, which would not make them eligible for electronic money status.

If a stablecoin does qualify as a VFA, then it must meet the criteria set out in the Virtual Financial Assets Act in order to be considered as electronic money. Specifically, it must have a one-to-one ratio with a fiat currency and be redeemable at any time at par value. Additionally, the issuer must have the required amount of fiat currency in reserve to cover the outstanding stablecoins.

The VFAA provides clear guidelines on what information a white paper for a stablecoin should include, how collected funds may be used, and how due diligence on the individuals behind the project or entity seeking fund is to be carried out. It also clearly clarifies that businesses will be liable to pay damages to anyone that loses money due to false statements contained in the whitepaper.

Furthermore, the EU MiCAR governs the issuance and operation of stablecoins in the EU. If a stablecoin exceeds a certain size or market cap, it will be subject to MiCAR. Therefore, stablecoin issuers operating in Malta will have to comply with both VFA Act and MiCAR requirements and guidelines to ensure proper regulatory compliance.

NFTs: The MFSA has established guidelines under the VFA Framework regarding the regulatory treatment of Non-Fungible Tokens (**NFTs**). These guidelines, effective from July 1, 2023, clarify that NFTs are excluded from the VFA definition and framework due to their unique and non-fungible nature, lacking attributes for use as a means of exchange, store of value, or unit of account.

While excluded from the VFA framework, NFTs may fall under other categories of Distributed Ledger Technology Assets (**DLT assets**), including financial instruments. Stakeholders can use these guidelines to determine the regulatory framework applicable to their NFT activities.

The guidelines specifically apply to issuers offering NFTs to the public in or from within Malta, as well as individuals providing services related to NFTs. These guidelines should be

consulted before applying the Financial Instrument Test for determining the regulatory classification of DLT Assets.

Criteria for classifying NFTs are set out, emphasising uniqueness and non-fungibility. Exclusions are also provided, highlighting that large series or collections of NFTs may impact fungibility, potentially leading to the asset not being classified as a non-fungible token.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Malta?

DeFi activities, including virtual asset lending, are regulated in Malta under the VFA framework. The regulations mandate licensing or exemption for individuals engaged in VFA services, emphasising the safekeeping of clients' assets and prevention of unauthorised use.

Chapter 1 of the Virtual Financial Assets Rulebook consists of rules for VFA Agents, covering the general scope, high-level principles, and registration requirements. Ongoing obligations for VFA Agents, including those involved in DeFi lending, are explained in Title 2, covering compliance with anti-money laundering laws and various requirements.

Chapter 2 of the Rulebook and the Rules for Issuers of Virtual Financial Assets address DeFi activities, specifying requirements for issuers and VFA agents involved in lending virtual assets. This includes obligations related to Initial VFA Offerings, trading on DLT exchanges, and adherence to the Virtual Financial Assets Act.

Chapter 3 of the Rulebook focuses on licensing requirements for Virtual Financial Asset Service Providers, including those engaged in DeFi activities. It stipulates the need for a valid license issued by the MFSA for providing VFA services in Malta. The chapter sets out the authorisation process, high-level principles, and capital requirements for VFA Service Providers, including those operating virtual asset lending services.

The VFAA classifies VFAs as digital mediums of exchange, units of account, or stores of value, subjecting DeFi activities to regulation. Entities involved in DeFi, such as issuers, agents, and service providers, must be authorised by the MFSA and comply with AML/CFT regulations. The Financial Instrument Test determines the regulatory classification of DeFi activities, while appointing a Money Laundering Reporting Officer is required for compliance with AML/CFT provisions.

Are there any restrictions on issuing or publicly offering virtual assets in Malta?

The issuance or public offering of virtual assets in Malta is subject to strict regulations described in the VFAA and the associated Virtual Financial Assets Rulebook Chapter 2.

Under the VFAA, Article 3(1) imposes restrictions, stating that no issuer can issue or propose to issue virtual financial assets to the public in or from within Malta without registering a whitepaper for that specific virtual financial asset with the MFSA. The whitepaper, which is subject to registration, must include key information such as details about the issuer, its management structure, the virtual financial asset, and provisions for enforcement, as specified in the VFAA.

Article 3(2) of the VFAA explains the mandatory content for the whitepaper, ensuring comprehensive information about the issuer and the virtual financial asset.

Furthermore, the VFAA requires that the offering of virtual financial assets to the public must be conducted in a fair, transparent, and non-misleading manner. The MFSA is empowered to issue guidelines, rules, and orders to specify requirements for such offerings, ensuring compliance with the high-level regulatory principles established under the framework.

Additionally, issuers undertaking a public offering or seeking admission to trading on a DLT exchange must adhere to certain MiFID II framework requirements, such as preparing a prospectus or offering document.

Title 2 of chapter 2 specifies the requirements issuers must follow, including the production and registration of a whitepaper with the MFSA. Title 3 of Chapter 2 details supplementary conditions for VFAs admitted to trading on a DLT exchange, listing conditions for admissibility to trading. As per chapter 2 following are the restrictions and requirements for issuing or publicly offering virtual assets in Malta:

1. Producing and registering a whitepaper with the MFSA before making a VFA offering;
2. conforming to any guidelines or guidance notes issued by the Financial Intelligence and Analysis Unit of Malta;
3. undertaking the Financial Instrument Test before offering a DLT asset to the public or applying for its admission on a DLT exchange;
4. issuing a compliance certificate before commencing the offering or procedure for the admission of a VFA;
5. appointing a VFA agent who is registered with the MFSA;
6. compliance with any applicable financial regulations or requirements;
7. accessibility of all VFA-related information to the public;
8. issuing a written confirmation of the proper extraction of accounting information from accounting records;
9. appointing an independent third party as a custodian for VFAs and virtual tokens;
10. maintaining proper accounting books and records;
11. disclosure of all relevant information to the MFSA;
12. providing access to documents upon request;
13. co-operating with the MFSA in an open and honest manner and providing the authority with any information required;
14. complying with the Maltese laws, regulations, and rules related to VFA and the guidance notes issued by the MFSA;
15. issuers shall not apply under this Act unless they have an appropriate legal structure to carry out their obligations; and

16. obligation to appoint key functionaries and to comply with the criteria applicable to them.

In summary, the issuance or public offering of virtual assets in Malta is possible but strictly regulated, requiring adherence to the VFAA framework, Virtual Financial Assets Rulebook Chapter 2, and associated regulations.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in Malta?

Yes, according to the VFA Rulebook, there are some exemptions to the restrictions on issuing or publicly offering virtual assets in Malta:

1. *Small Offerings Exemption*: VFAs issued with an aggregate value of fewer than 5 million euros don't require the whitepaper's registration or the issue of the VFA Offering Circular.
2. *Professional Investors exemption*: VFA offerings structured in such a way to target exclusively professional investors that explicitly state that it is not suitable for retail investors will be exempt from the public offering requirements.
3. *Non-Trading Assets exemption*: VFAs that possess certain non-trading elements that go beyond its functions as a simple financial asset will be exempt from requiring a VFA agent, a whitepaper, and an authority-approved systems auditor.
4. *Closed-Loop payment instrument exemption*: VFAs intended to be used exclusively as payment instruments for the purchase of goods or services exclusively from the issuer's network of service providers may qualify for an exemption.

Other exemptions are given in the VFA Act and regulations, and some of them are as follows:

1. *Public Sector Issuers*: Public Sector Issuers and virtual financial assets issued by them are exempt from the requirement to appoint a VFA agent and making public disclosures.
2. *Cryptocurrency and Initial Coin Offering (**ICO**) companies*: Such companies that conduct certain activities in Malta might be considered as offering Innovative Technology Arrangements or Services under the Innovative Technology Arrangements and Services Act, which means that they are required to apply for a license with the MDIA. However, the MDIA offers exemptions from licensing under certain conditions as listed below:
    - 2.1 *Exemption for small-scale ICOs*: An exemption is available for small-scale ICOs in terms of the VFA Act. Under this exemption, an issuer of VFAs whose fundraising through an ICO does not exceed €8 million over a period of 12 months can apply to be exempted from the requirement of having to prepare and register a white paper
    - 2.2 *Accredited investors exemption*: ICO issuers may be exempted from obtaining an MDIA license if the sale of the token to the public is restricted exclusively to accredited investors.

2.3 *Exemption on the grounds of national interests*: The authority may grant an exemption from the need to obtain a licence on the grounds that it is in the national interest for the Innovative Technology Arrangement or Service to be carried out in Malta and provided that no Maltese entity is capable of providing the same services or performing the same functions.

3. *Transferable securities or other financial instruments*: Virtual financial assets that constitute transferable securities or other financial instruments fall under a different regulatory regime, and are exempt from VFA regulations.

4. *Virtual financial assets traded among qualifying investors*: Virtual Financial assets traded among qualifying investors who are not retail investors are exempt from any obligation under this Act.

3. Regulation of VASPs in Malta

Are VASPs operating in Malta subject to regulation?

Yes, Virtual Asset Service Providers (**VASPs**) operating in Malta are subject to regulation under the VFAA and related regulations. The VFAA and its associated rules set out a regulatory regime for VASPs, which are entities that offer services related to VFAs and include virtual currency exchange platforms, wallet providers, and brokers.

VASPs operating in Malta are required to obtain authorisation or registration from the MFSA before they can operate. The scope and type of authorisation that the VASPs require depend on the type of services provided and the associated risks.

The VFAA has established four classes of VASPs, and each class has its own authorisation requirements, such as capital requirements, risk management frameworks, and compliance obligations. The four classes of VASPs are as follows:

1. *Class 1 VASPs*: These are VASPs that provide custody services of virtual financial assets and do not hold control over the assets they hold for their clients. Class 1 VASPs are required to register with the MFSA.

2. *Class 2 VASPs*: These are VASPs that provide exchange services between virtual financial assets and fiat currencies or other virtual financial assets. Class 2 VASPs are required to obtain a license from the MFSA.

3. *Class 3 VASPs*: These are VASPs that provide services related to the operation of a VFA market, including the operation of a multilateral or organised trading facility. Class 3 VASPs are required to obtain a license from the MFSA.

4. *Class 4 VASPs*: These are VASPs that provide services not covered by any of the above classes. Class 4 VASPs are required to apply for registration or authorisation with the MFSA.

All VASPs are also required to comply with the VFAA's anti-money laundering (**AML**) and counter-terrorist financing (**CTF**) requirements, which include customer due diligence, ongoing monitoring, and reporting of suspicious activities to the Financial Intelligence

Analysis Unit (**FIAU**). Additionally, VASPs must comply with the MFSA's ongoing supervision and reporting requirements.

Are VASPs providing virtual asset services from offshore to persons in Malta subject to regulation in Malta?

Yes, VASPs providing virtual asset services from offshore to persons in Malta are subject to regulation in Malta under the VFAA and associated regulations.

The VFAA applies to any VASP providing virtual asset services within or from Malta, regardless of whether the organisation is licensed in Malta or operates from another jurisdiction. Therefore, VASPs providing virtual asset services from offshore to persons in Malta must comply with Maltese regulations for providing such services.

Specifically, any person carrying out VFA services to Malta, including VASPs providing virtual asset services from offshore, must comply with the requirements of the VFAA and the rules and regulations made thereunder. This includes obtaining any necessary authorisation or registration with the MFSA and complying with the requirements related to AML and CTF, customer due diligence, ongoing monitoring, and reporting of suspicious activities to the FIAU.

The VFAA applies to persons engaged in the issue, offering, or trading of VFAs, including VASPs that operate from offshore but provide virtual asset services to persons in Malta. Therefore, VASPs must ensure that they comply with the VFAA and its rules and regulations when providing virtual asset services to persons in Malta, regardless of their location.

It is worth noting that VASPs providing virtual asset services from offshore may also be subject to similar regulations and requirements in their home jurisdiction. Therefore, they may need to comply with both their home jurisdiction and Malta's regulatory requirements when providing virtual asset services to persons in Malta.

What are the main requirements for obtaining licensing / registration as a VASP in Malta?

Malta has established a regulatory framework for VASPs operating in or from within its jurisdiction. The VFAA provides the legal requirements for licensing of VASPs in Malta. The following are the main requirements for obtaining licensing as a VASP in Malta:

1. *Application Requirements*: Any person seeking a licence or authorisation as a VASP in Malta must submit an application for a VFA Services Licence to the MFSA. The application must be submitted by a duly authorised representative of the applicant. This representative must undergo a thorough fitness and properness assessment by the MFSA.
2. *Different Categories of License*: Depending on the nature of the business, a person may apply for one or more of the following classes of VFA service:

    Class 1A - Reception and transmission of orders

    Class 1B - Execution of orders on behalf of clients

Class 2 - Dealing on own account

Class 3 - Custodian or Nominee Services

Class 4 - Investment Advice

Class 5 - Portfolio Management.

3. *Licensing Fees*: The licensing fees vary depending on the type of VFA service and size of the business, as follows:

   Class 1A - €10,000

   Class 1B - €25,000

   Class 2 - €50,000

   Class 3 - €25,000

   Class 4 - €25,000

   Class 5 - €50,000

4. *Ownership, Management and Governance Criteria*: All individuals with significant control over the VASP must undergo a thorough fit-and-proper test by the MFSA. VASPs must also observe strict governance principles, such as having clear lines of responsibility, management structures, and effective internal controls. They must also have adequate operational and security arrangements to ensure the safety and security of customer information.

5. *Adequate Resources*: VASPs must demonstrate they have adequate resources to carry out their VFA services. This includes having sufficient capital and liquidity to absorb potential losses and operational issues and to ensure compliance with the VFAA requirements and regulations.

6. *AML/CFT and Customer Due Diligence (**CDD**)*: Policies VASPs must have adequate policies, procedures, and systems in place to monitor, detect, and prevent money laundering, financing of terrorism, and other illicit activities. This includes implementing a risk-based approach for customer identification, conducting enhanced due diligence (**EDD**) on higher-risk customers, and conducting ongoing CDD measures to ensure the integrity of customer information. It is important to note that the VFAA regulation provides detailed requirements for VASPs seeking authorisation/licensing to operate in Malta.

In addition, issuers seeking licensing or registration as VASPs in Malta must comply with Chapter 2 of the Virtual Financial Assets Rulebook. Requirements include:

1. be a legal person formed under Maltese law;
2. submit an annual compliance certificate;
3. appoint an independent third-party custodian;
4. obtain a license or registration from the MFSA; and
5. submit a compliant whitepaper to the MFSA along with relevant documentation and fees.

Issuers must also adhere to Virtual Financial Assets Rulebooks covering enforcement and sanctions, initial and ongoing requirements for issuing and trading virtual financial assets, and compliance and enforcement. The MFSA holds sanctioning powers, including administrative penalties up to EUR 150,000, considering factors like cooperation, past infringements, and systemic consequences.

What are the main ongoing requirements for VASPs regulated in Malta?

VASPs operating in Malta are subject to ongoing requirements stated in the VFAA, VFAR, and the Virtual Financial Assets Rulebook. The following are some of the main ongoing requirements that VASPs in Malta are expected to comply with:

1. *Compliance with VFAA, VFAR, and the Rulebook*: VASPs are expected to continue adhering to the provisions and requirements set out in the VFAA, VFAR, and the Rulebook. This includes submitting regular reports, complying with ongoing due diligence requirements, and ensuring that all operations remain in line with regulatory standards at all times.
2. *AML/CFT Program*: VASPs must maintain adequate AML and CFT policies and procedures. This includes performing customer due diligence, monitoring financial transactions for suspicious activity, and submitting regular reports to the relevant regulatory authority.
3. *Ongoing Financial Reporting*: VASPs must prepare and file periodic financial statements and reports, including auditor attestation reports and compliance certificates. Additionally, VASPs must notify the MFSA of any material changes to their operations, employees, or ownership structure.
4. *IT and Security Requirements*: VASPs must have robust IT and security protocols in place to protect the integrity of their systems and customer data. This includes undergoing regular IT system audits and implementing measures to detect and prevent fraud and cyber threats.
5. *Adequate Resolution Framework*: VASPs must maintain a suitable resolution framework to ensure that customer funds and assets are protected in the event of insolvency or other financial difficulties.
6. *Regulatory Supervision and Oversight*: VASPs must cooperate fully with the regulatory authority and provide any requested information in a timely and accurate manner. Additionally, VASPs must ensure that their employees and agents are properly trained on all regulatory requirements and standards.

What are the main restrictions on VASPs in Malta?

In Malta, the regulation of VASPs is governed by the VFAA which imposes stringent requirements on various service providers, including those launching cryptocurrencies, brokerages, portfolio managers, custodian and nominee service providers, eWallet providers, investment advisors, and notably, cryptocurrency exchanges.

Key restrictions and requirements for VASPs in Malta include:

1. *Appointment of VFA Agent*: Issuers of Virtual Financial Assets must appoint a VFA agent, approved by the MFSA, responsible for specific reporting and monitoring obligations.
2. *Licensing Requirements*: License requirements apply to the provision of any VFA service in or from Malta, covering a range of services, such as reception and transmission of orders, execution of orders on behalf of others, portfolio management, and more.
3. *Whitepaper Guidelines*: The VFAA provides clear guidelines on the content of a whitepaper, including information disclosure, utilisation of collected funds, and due diligence on the individuals associated with the fund-seeking entity.
4. *Liability for False Statements*: Businesses are liable to pay damages to individuals who incur losses due to false statements contained in the whitepaper.
5. *Initial VFA Offerings and Trading*: The VFAA regulates the types of VFAs issued through an IVFAO and admission to trading on a DLT exchange, requiring the submission of a registered whitepaper to the MFSA.
6. *Authorisation and Ongoing Compliance*: Service providers intending to offer VFA-related services must obtain authorisation from the MFSA and adhere to ongoing compliance with applicable rules, regulations, and guidelines issued by the MFSA and/or MDIA.
7. *Licensing Requirements for VASPs*: Chapter 3 of the VFAA consist of general requirements for licensing VASPs, emphasising restrictions on activities. Only licensed entities can provide VFA services in or from Malta.
8. *Competent Authority Discretion*: The competent authority may prohibit individuals or entities from providing VFA services if they pose risks to investors, the public, Malta's reputation, or the promotion of innovation, competition, and choice.
9. *Exemplary Conduct and Resources*: Licenses are granted to individuals or entities with exemplary conduct in all respects and possessing the necessary financial, organisational, and technical resources.
10. *Activity Limitations and Conditions*: VASPs must operate strictly within the activities permitted by their granted license, subject to conditions set by the competent authority.
11. *Restrictions on IVFAOs*: VASPs must adhere to specific restrictions and disclosure requirements related to IVFAOs, as described in Chapter 2 of the VFAA.
12. *Advertisement Approval*: Only license holders may issue or cause to be issued advertisements related to VFA services, with contents vetted and approved by the license holder's board of administration.
13. *Compliance with Laws*: VASPs must operate in compliance with all applicable laws, regulations, and rules, subject to the satisfaction of the competent authority.

What are the main information that VASPs have to make available to its customers?

VASPs must make available to its customers the following information:

1. full details of the Issuer, legal advisors, auditors, and technical experts;
2. services offered;
3. terms and conditions of the services provided;
4. information on the risks of owning, acquiring, or holding virtual financial assets;
5. information regarding fees and charges, including fees, commissions, or any other remuneration;
6. complaints procedures;
7. whether it holds clients' funds/securities or registers them under its ownership in a nominee account;
8. any conflict of interest that may arise;
9. a whitepaper with all the information stipulated in the First Schedule to the Act, including a detailed description of past and future milestones, how these milestones will be financed, progress reports, and the effect of the public offering on investors;
10. changes to conditions stipulated in the whitepaper, including any smart contract thereof, must be notified beforehand to the Authority and shall not be applied before the Authority grants its approval;
11. procedures providing a reasonable basis for the board of administration to make proper decisions regarding AML/CFT/KYC matters;
12. the identity of the Functionaries it appoints within the whitepaper. Functionaries refer to persons responsible for the Issuer's safekeeping of customers' assets, custody (where applicable), and money laundering compliance who must satisfy all the conditions for fit and proper tests specified by the Authority;
13. the name of the VFA agent and its responsibilities, providing the Authority with up-to-date information on the Issuer, inter alia, with regards to fitness and properness assessment; and the contact details of a designated Money Laundering Reporting Officer (**MLRO**) responsible for ensuring that the VASP's AML/CFT controls and processes are effective.

What market misconduct legislation/regulations apply to virtual assets?

The VFAA sets out specific provisions addressing market abuse for virtual assets in Malta. These provisions are consistent with EU-wide standards and with existing standards established by the MFSA for traditional financial services.

Firstly, the VFAA prohibits insider dealing and unlawful disclosure of inside information. This includes buying, selling, or otherwise trading a VFA while in possession of insider information or disclosing insider information to third parties. Any person involved in such activities could face administrative fines, imprisonment, or both.

Secondly, the VFAA also prohibits market manipulation, which involves using deceptive or manipulative practices on a market, such as false or misleading statements or the spread of

false rumors to manipulate prices. Any person found to have manipulated the VFA market could face administrative fines and imprisonment.

Thirdly, the VFAA prohibits fraudulent practices, such as spreading false or misleading information for the purpose of inducing others to trade. This includes intentionally spreading rumors or false information about VFAs. Persons found guilty of such acts could face administrative fines, imprisonment, or both.

The VFAA also requires all VFA service providers, including VFA exchanges and VFA wallet providers, to establish and maintain effective controls and systems to prevent, detect, and report any potential market abuse activities. Furthermore, the MFSA has broad investigative and enforcement powers under the VFAA to investigate, request information and documents, and impose administrative sanctions for any breaches identified. It's worth noting that these provisions apply to all VFA activities that take place in or from within Malta.

Furthermore, the VFAA empowers the MFSA to take various actions to prevent market abuse, including:

1. requiring the inclusion in the whitepaper, advertisement or the issuer's website, as applicable, of supplementary information necessary for investor protection as the competent authority may specify;
2. requiring the amendment in the whitepaper, advertisement or on the issuer's website, as applicable, of statements which are misleading, inaccurate or inconsistent;
3. requesting any person to take steps to reduce the size of the position or exposure;
4. discontinuing or suspending the trading of virtual financial assets on a VFA exchange;
5. suspending temporarily the trading of a virtual financial asset on any VFA exchange; and
6. suspending or removing from trading a virtual financial asset which no longer complies with the definition of a virtual financial asset or the bye-laws of the VFA exchange.

These powers of the MFSA do not permit it to demand information about the source codes of any proprietary technology or of information of highly sensitive, intellectual property which is protected by law and which relates to innovative DLT or smart contracts. The VFAA also allows the MFSA to share relevant information with other European and national authorities.

4. Regulation of other crypto-related activities in Malta

Are managers of crypto funds regulated in Malta?

Yes, the managers of crypto funds in Malta are regulated by the MFSA under the ISA and the VFAA.

The ISA regulates all investment services in Malta, including the management of collective investment schemes (**CISs**), which include crypto funds. Managers of crypto funds in Malta are therefore required to obtain an Operator of CIS license from the MFSA. CIS managers in

Malta are also subject to ongoing regulatory requirements, including reporting standards, financial viability assessments, risk management standards, and disclosure requirements.

In addition to the ISA, the VFAA places additional requirements on managers of crypto funds. Under the VFAA, managers of crypto funds are considered to be VFA service providers and must obtain a VFA services license from the MFSA. Managers of crypto funds must also appoint a compliance officer and a MLRO, and ensure that they have adequate risk management and compliance procedures in place.

Are distributors of virtual asset funds regulated in Malta?

Yes, distributors of virtual asset funds are regulated in Malta under VFAA. According to the VFAA, distributors are considered to be VFA service providers and must therefore obtain a VFA services licence from the MFSA. Distributors of virtual asset funds must meet certain requirements to obtain a license, such as having adequate financial resources, a sound governance structure, and fit and proper individuals in key positions. Distributors must also have appropriate risk management and compliance procedures in place, including AML/CFT procedures.

The VFAA also requires distributors of virtual asset funds to provide investors with appropriate information about the products they are distributing. This includes information about the risks associated with investing in virtual assets, the fees charged, and any other material information that is necessary to enable investors to make an informed decision.

Furthermore, the VFAA requires that distributors of virtual asset funds comply with any other regulatory requirements that may be applicable to the products they are distributing. For example, if the virtual asset fund is a CIS, the distributor would also need to comply with the ISA and obtain the necessary authorisation to distribute that CIS in Malta.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Malta?

Yes, the MFSA has established requirements for intermediaries seeking to provide trading services in virtual assets for clients or advise clients on virtual assets in Malta. These requirements are specified under the VFAA and the ISA.

Under the VFAA, intermediaries that wish to provide virtual asset services in Malta are considered to be VFA service providers and are required to obtain a VFA services license from the MFSA. Intermediaries are subject to ongoing regulatory requirements, including ongoing due diligence of clients, compliance with AML/CFT requirements, and ongoing monitoring of client transactions. Intermediaries are also required to maintain adequate financial resources and a sound governance structure.

Under the ISA, intermediaries that provide investment services in or from Malta, including those related to virtual assets, are required to be authorised and licensed by the MFSA. Investment service providers are subject to compliance with a range of regulatory requirements, including conducting appropriate due diligence of clients, maintaining appropriate records, complying with AML/CFT requirements, and ongoing reporting

requirements. Investment service providers are also required to maintain adequate financial resources and a sound governance structure.

Furthermore, intermediaries that provide trading services in virtual assets or advise clients on virtual assets are also subject to specific requirements related to the provision of information and advice to clients. They have an obligation to provide clients with appropriate information about the products being traded or advised on, including the risks and costs involved. They must also ensure that clients are aware of all the options available to them and that they are making informed decisions based on their personal circumstances and risk tolerance.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in Malta?

Malta is gearing up for significant changes in its virtual currency sector due to the upcoming MiCA regulation in the EU, scheduled for implementation in 2024. MiCA aims to standardise the oversight of crypto assets across EU member states, including Malta. The MFSA is actively aligning its regulations with MiCA, working towards a unified licensing system for crypto service providers. MiCA introduces concepts such as reverse solicitation, allowing non-EU firms to offer crypto services without MiCA authorization at the customer's request. Existing licensed firms can provide crypto services without additional authorization.

Has there been any notable events in Malta that has prompted regulatory change recently?

Malta's recent regulatory changes are influenced by the upcoming MiCA regulation, effective December 2024. The MFSA is aligning the country's crypto regulations with MiCA through public consultations. Changes include revising the VFA framework, removing audit and insurance requirements to simplify compliance for crypto businesses. Aim is to prepare local businesses for the EU-wide regulatory environment.

6. Pending litigation and judgments related to virtual assets in Malta (if any)

There are currently no pending litigations or judgments in Malta.

7. Government outlook on virtual assets and crypto-related activities in Malta

Malta has a positive outlook on virtual assets and crypto-related activities, being an early adopter of a specific regulatory framework with the enactment of the VFAA in November 2018. The MDIA was established to promote the development of digital technologies. Aligning with the EU's MiCA, Malta aims to standardise crypto asset oversight across EU

member states. The MFSA began discussions on virtual asset regulation in late 2017, leading to the VFAA's enactment. The VFA Rulebook provides additional regulation for Crypto-Asset Service Providers and financial services sector operators. The MFSA has issued guidance notes covering aspects like VFA agent registration and whitepaper registration processes, reflecting a proactive approach by the Maltese government in regulating virtual assets and crypto-related activities.

8. Advantages of setting up a VASP in Malta

Malta has a regulatory framework designed to protect customers, investors, market integrity, and the country's reputation. To obtain a full license for a Maltese cryptocurrency company, specific requirements must be met, offering advantages such as a tax system with low corporate income tax, international double taxation agreements, and relatively low VAT.

Various legal entities, including Ltd and Plc, can be established for trading or holding purposes. VFA service providers can benefit from the Highly Qualified Professionals Policy, enjoying a 15% flat tax rate up to EUR 5 million. Crypto-specific tax guidelines issued by the CFR office provide clarity on income tax, stamp duty, and VAT rates for DLT assets. Malta's Virtual Financial Assets Act sets regulations for launching cryptocurrencies and services such as brokerages, portfolio managers, custodians, eWallet providers, investment advisors, and cryptocurrency exchanges. With an established VFA framework aligned with international standards, Malta fosters a business-friendly culture, evident in the MFSA's open-door policy, making it a preferred choice for crypto industry players.

February 2024

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Middle East

Abu Dhabi

1. Virtual asset laws and regulations in Abu Dhabi

Abu Dhabi, as the capital of the United Arab Emirates, has actively shaped regulations for virtual assets. The regulatory framework for Abu Dhabi Global Market (**ADGM**) is overseen by authorities such as Financial Services Regulatory Authority (**FSRA**) and ADGM courts. This overview explores everything from licensing and registration requirements to anti-money laundering laws, capital and liquidity requirements, and governance and compliance obligations, Government's approach to virtual currencies, recent regulatory developments, and other key aspects of the evolving regulatory landscape in Abu Dhabi.

What is considered a virtual asset in Abu Dhabi?

In Abu Dhabi, virtual assets are treated as commodities, not automatically classified as investments or other regulated financial instruments. As commodities, virtual assets are regulated by government authority, FSRA. Virtual asset laws and regulations apply to persons running a commercial firms, financial institutions, and entities seeking to conduct an offering of digital securities. The regulatory framework requires registration with the FSRA, providing information on financial standing, management, legal structure, ownership, and a clear business plan, and adhere to asset management practices and reporting obligations.

What are the relevant laws and regulations?

1. *Law No. 4 of 2013*: Concerning ADGM, established and defined Abu Dhabi as a financial free zone with independent legal personality and full legal capacity. The objectives were to promote the Emirate as a global financial center, develop its economy, and establish prospects for financial investments.

2. *Schedule of Contraventions*: ADGM has issued a schedule of contraventions and applicable fines in accordance with Article 23 of Abu Dhabi Law No.4 of 2013, as amended. Contraventions include engaging in financial activity without proper permit or license, failing to notify of company alterations, provision of false or misleading information, among others. The applicable fines for contraventions range from USD 150 to USD 50,000, with some exceeding that limit for certain cases.
3. *The Financial Services and Market Regulations, 2015*: It provides a comprehensive regulatory framework that governs financial services in the ADGM. The Regulations impose various licensing and registration requirements, as well as obligations on persons involved in providing virtual asset or e-money services. These requirements and obligations include (**AML/CFT**), capital and liquidity requirements, and fund segregation.
4. *The Financial Services and Markets (Amendment No 1) Regulations* (Issued on 12.06.2017): Introduced key changes to the Financial Services and Markets Regulations (**FSMR**) 2015. The amendments make agreements resulting from "Unlawful Communications" unenforceable. Authorised persons are prohibited from accepting deposits in UAE Dirham, engaging in corresponding foreign exchange transactions, or receiving deposits from UAE markets. The exclusive means for establishing an Investment Trust are specified, and a regulatory framework for investigations into Authorised Persons or Recognised Bodies in the ADGM is established. The definition of "Participating Interest" now requires a 20% or more holding of Shares unless proven otherwise.
5. *The Financial Services and Markets (Amendment No 2) Regulations* (Issued on 25.06.2018): Introduced provisions to the FSMR 2015 related to virtual currency. The Regulator can now establish rules for authorised persons engaging in the Regulated Activity of Operating a Crypto Asset Business in or from the ADGM. The Regulator has the authority to specify Accepted Crypto Assets, set prerequisites for this activity, and prescribe additional requirements for compliance. The Regulator can impose extra obligations on authorised persons in the Crypto Asset Business, outlining specific actions. The amended regulations define "Operating a Crypto Asset Business," covering Crypto Asset activities while excluding certain activities from this definition.
6. *The Financial Services and Markets (Amendment No 3) Regulation* (Issued on 04.07.2018): Made changes to the FSMR 2015. Part 16, focusing on Public Record and Disclosure of Information, was adjusted to limit the Regulator's ability to disclose confidential information without prior consent. The regulations now specify general restrictions on disclosure and exceptions, allowing disclosure for purposes like public functions, criminal proceedings, and anti-money laundering compliance. The Regulator is also authorised to create rules permitting specified persons or categories to disclose information for fulfilling specific functions.
7. *The Financial Services and Markets (Amendment No 2) Regulations* (Issued on 08.04.2019): Brought changes to the FSMR 2015, primarily focusing on anti-money laundering measures. The updates empower the regulator to establish rules for combating money laundering and terrorist financing, along with implementing corresponding measures, policies, and procedures. The regulations recognise the application of relevant Federal

laws in ADGM, emphasising compliance with Federal Anti-Money Laundering Legislation. Relevant Persons are required to conduct customer due diligence and maintain records following specified Rules.

8. *The Financial Services and Markets (Amendment No. 2) Regulations* (Issued on 17.02.2020): Amended the FSMR 2015. Changes include a new section governing the operation of a Crypto Asset Business, explaining requirements for Regulated Activities related to Virtual Assets. The amendment grants the regulator authority to prescribe specific requirements for Authorised Persons and establish definitions for terms related to Crypto Virtual Assets. It further empowers the regulator to prescribe requirements for engaging in Regulated Activities related to Virtual Assets. The amendment allows the Regulator to exclude, impose, or require specific actions for Authorised Persons involved in Regulated Activity or Operating a Crypto Asset Exchange Multilateral Trading Facility. Additionally, it introduces the definition of "Inside Information" to prevent the use of non-public information impacting the price of financial instruments or virtual assets for financial gain.
9. *The FSRA Guidance and Policy Manual (**GPM**)*: On the Regulation of Digital Security Offerings and Virtual Assets informs how the FSRA regulates financial services entities and markets in ADGM. The manual adopts a risk-based approach, covering policies, authorisation processes, and enforcement guidelines. Applicants undergo a fitness and propriety assessment before obtaining regulatory status, with FSRA supervision tailored to size, complexity, and risk profile. The FSRA holds enforcement powers, granting waivers or modifications and investigating and taking action against regulatory violations. The manual specifies information requirements for applicants, safeguards confidentiality during investigations, and allows settlements through a final notice or enforceable undertaking.
10. The Guidance on Regulations for Digital Securities in ADGMs: Incorporated amendments in regulations related to the issuance of digital securities and the content of associated prospectuses, with rules for Recognised Investment Exchanges (**RIEs**), Multilateral Trading Facilities (**MTFs**), and Organised Trading Facilities (**OTFs**) trading digital securities. Key changes include ensuring reliable settlement processes. The Guidance outlines regulations for intermediaries and introduces guidelines for technology governance, controls, transaction protocols, and measures against financial misconduct. It incorporates norms related to Islamic finance rules and stablecoins.
11. *The Guidance on Regulation of Digital Security Offerings and Virtual Assets under the FSMR*: Applies to entities considering initial coin or token offerings (ICOs) for fundraising. The FSRA follows a technology-neutral regulatory approach, applying requirements to the execution of Regulated Activities or those specified in a Recognition Order. Noteworthy risks include fraud, money laundering, terrorist financing, and volatility. The FSRA advises careful assessment of risks before investing in Virtual Assets or related Derivatives. Importantly, Virtual Assets resembling Digital Securities are subject to relevant regulatory requirements.
12. *The Financial Services and Markets (Amendment No. 2) Regulations* (Issued on 21.03.2021): Have been enacted to amend the FSMR 2015. These include the mandate for the

Regulator to publish a comprehensive record encompassing authorised persons, recognised investment exchanges, and public funds. The revised definition designates "Third-Party Services" as a regulated activity, with a "Third-Party Provider" being an Authorised Person authorised for Providing Third-Party Services. Notably, exclusions have been specified for Technical Services, Payment or Securities Settlement Systems, and Services with Physical Form, separating situations where activities involving specified information do not fall under the ambit of Third-Party Services.

13. *Guidelines for Financial Institutions adopting Enabling Technologies* (Issued on 15.11.2021): The Central Bank of the UAE, the Securities and Commodities Authority, the Dubai Financial Services Authority, and the Financial Services Regulatory Authority jointly issued comprehensive guidelines for financial institutions embracing Enabling Technologies. These guidelines provide principles for safe use of technologies like cloud computing, biometrics, distributed ledger technology (**DLT**), and big data analytics. DLT, including Blockchain, is defined, with acknowledgment of Permissioned Blockchain. Guidelines emphasise a documented governance framework for decision-making and risk management in blockchain and DLT use. Institutions should ensure auditability of DLT applications. Virtual assets, including cryptocurrencies, are treated as Personal Data.
14. *Guiding Principles for the Financial Services Regulatory Authority's Approach to Virtual Asset Regulation and Supervision* (Issued on 12.009.2022): The guiding principles are designed to encourage collaboration with regulatory agencies globally, laying the foundation for consistent regulation. These principles outline FSRA's risk approach in areas like regulation, authorisation, financial crime, and international cooperation. Only operators meeting high standards are admitted to FSRA's jurisdiction. Comprehensive anti-money laundering rules promote best practices within ADGM's VA firms. FSRA's risk-based supervision extends to VA firms, with a team experienced in the industry.
15. *Financial Services and Markets (Amendment No. 1) Regulations* (Issued on 20.09.2022): Modify the 2015 FSMR, concentrating on Virtual Assets and Spot Commodities in ADGM. These amendments empower regulators to establish requirements for Authorised Persons dealing with Virtual Assets or Spot Commodities, introducing additional compliance obligations and exemption powers for specific Rules. The specified activity of Custody Services now includes safeguarding various assets. Notably, operating a Representative Office becomes a regulated activity, and Authorised Persons providing Third Party Services are restricted from holding Client Assets unless permitted under the relevant Financial Services Permission.
16. *Guidance – Regulation of Virtual Asset Activities in ADGM* (Issued on 28.09.2022): Sets out regulatory requirements for authorised persons in virtual asset-related activities, covering areas such as accepted virtual assets, capital requirements, anti-money laundering, terrorism financing, tax reporting, technology governance, market abuse, and risk disclosures. The guidance defines stablecoins, advocating for fully backed 1:1 fiat token. Stablecoin issuers in payments are considered money services businesses, requiring Financial Services Permission. Regarding non-fungible tokens (**NFTs**), the

guidance recognises their relevance without proposing a formal regulatory framework, allowing regulated multilateral trading facilities in ADGM to engage in NFT activities.

17. *The Distributed Ledger Technology Foundations Regulations* (Issued on 02.10.2023): The Distributed Ledger Technology Foundations Regulations create a legal framework within the ADGM for the regulation and establishment of DLT Foundations. These regulations cover criteria for foundation formation and registration, asset management, compliance obligations, governance, and reporting requirements. They also include provisions for the disqualification and liability of council members, the appointment of guardians, and the processes for migration and dissolution of DLT Foundations. The primary goal is to facilitate innovation and protect the interests of stakeholders within the DLT ecosystem in the ADGM.
18. *Consultation Paper No. 7 of 2024 (Proposed Regulatory Framework for Fiat-Referenced Tokens)*: The Proposed Regulatory Framework for Fiat-Referenced Tokens (**FRTs**), introduced by the FSRA in August 2024, focuses on the issuance and regulation of FRTs. These tokens are fully backed by high-quality liquid assets denominated in the same currency as the token, ensuring a stable value and providing a redemption right for token holders. Issuers of FRTs must maintain full backing of tokens with liquid assets and ensure that tokens can be redeemed at par value within two business days (T+2). The framework mandates monthly independent attestations of the reserve assets and annual external audits. Additionally, algorithmic stablecoins are prohibited under this framework. Issuers are also required to adhere to specific capital requirements and ensure that reserve assets are securely segregated.
19. *The Conduct of Business Rulebook (**COBS**)*: Includes various sections guiding Authorised Persons in their activities, notably those involving virtual assets, emphasising overall compliance and addressing custody and disclosure requirements for virtual assets. It laid down additional rules to Authorised Persons engaging in Regulated Activities related to Virtual Assets, covering Client Assets, Prohibition on Crypto-Asset Linked Instruments, Promoting Client Interests, Protecting Client Assets, and Reporting.
20. *The Fees Rules (**FEES**)*: Describe financial obligations related to virtual assets in various regulated activities.
    - 20.1 Applicants seeking Financial Services Permission for virtual asset-related activities pay an initial authorisation fee of $20,000, increasing to $125,000 for Operating a Multilateral Trading Facility.
    - 20.2 Authorised Persons in virtual asset-related regulated activities face an annual supervision fee of $15,000, or $60,000 for Multilateral Trading Facility operators.
    - 20.3 Those Providing Money Services pay an annual supervision fee of $25,000.
    - 20.4 Initial authorisation fees for Spot Commodities or Trading in OTC Leveraged Products range from $20,000 to $125,000.
    - 20.5 Annual supervision fees for Spot Commodities are $15,000, and for Trading in OTC Leveraged Products, they range from $5,000 to $40,000, with the higher fee for Retail Clients.

20.6 Authorised Persons Operating a Multilateral Trading Facility for virtual assets pay a monthly trading levy based on the Daily Trading Value (**DTV**) of Virtual Assets traded.

21. *The General Rulebook (**GEN**)*: Establishes regulations for entities under the FSMR 2015 or Market Infrastructure Rules, excluding Remote Bodies. In the context of virtual assets, it covers fundamental principles for Authorised, Approved, and Recognised Persons, addressing management, controls, interpretation, emergency procedures, disclosure, office location, and communication with the Regulator. It describes conditions for authorisation, including Controlled Functions, Approved Persons, and Recognised Persons. Financial Crime rules focus on fraud management, emphasising secure authentication and monitoring customer behavior. GEN also includes guidelines for corporate governance, specifying criteria for the Governing Body and disclosure of remuneration structures concerning virtual assets.
22. *The Market Infrastructure Rulebook (**MIR**)*: MIR defines criteria for membership and access to financial facilities, emphasising the need for appropriate procedures in making and amending rules. It further outlines rules for Remote Members and Bodies and encompasses general provisions covering cooperation with auditors, disciplinary actions, and appeals processes. The MIR establishes a comprehensive regulatory framework for financial institutions operating within the ADGM, ensuring adherence to guidelines related to virtual assets and market infrastructure.

Who do such laws and regulations apply to?

The regulatory framework covering virtual asset activities generally applies to:

1. Persons engaged in the business of "Providing Virtual Asset Services",
2. Persons operating a Crypto Asset Exchange,
3. Persons running a Crypto Asset OTC desk,
4. Commercial Firms,
5. Financial Institutions, and
6. Individual participants dealing with cryptocurrencies and virtual assets.

Who are the relevant regulatory authorities in relation to virtual assets in Abu Dhabi?

The regulatory authorities governing virtual assets include the Financial Services Regulatory Authority (**FSRA**). The FSRA in Abu Dhabi functions as a primary regulatory body with the responsibility of overseeing and regulating financial services and markets within the ADGM. Its roles include developing and enforcing regulatory frameworks, issuing licenses to financial institutions, and overseeing compliance with relevant laws and regulations.

What are the penalties for breaches of virtual asset laws and regulations in Abu Dhabi?

The applicable fines for contraventions related to virtual assets and crypto asset activities range from USD 150 to USD 50,000, with some exceeding that limit for certain cases. Penalties for breaches of virtual assets laws and regulations may also include sanctions, suspension or revocation of licenses, and even criminal prosecutions.

Furthermore, the FSMR, 2015 contain provisions related to market abuse, which can create liability for persons or entities who engage in insider trading or market manipulation concerning virtual assets or crypto currencies. Non-compliance with the relevant laws and regulations can result in significant fines and reputational damage to the offending firms or individuals involved in virtual asset activities.

2. Regulation of virtual assets and offerings of virtual assets in Abu Dhabi

Are virtual assets classified as 'securities' or other regulated financial instruments in Abu Dhabi?

Virtual assets are generally not automatically classified as investments or other regulated financial instruments. Digital Securities are regulated as Specified Investments under the Financial Services and Market Regulations (**FSMR**), while virtual assets are treated as commodities and, therefore, not deemed specified investments under the FSMR.

The regulatory requirements for authorised persons engaged in regulated activities in relation to virtual assets, such as capital requirements, anti-money laundering, and countering financing of terrorism, are explained in the document called 'Guidance-Regulation of Virtual Assets Activities in ADGM'.

Are stablecoins and NFTs regulated in Abu Dhabi?

Stablecoins: The regulatory landscape for stablecoins in Abu Dhabi has evolved with the introduction of Consultation Paper No. 7 of 2024 by the FSRA on August 20, 2024. This paper outlines a new framework specifically for Fiat-Referenced Tokens (**FRTs**), a category of stablecoins that are backed by high-quality, liquid assets denominated in a single fiat currency.

Stablecoins are defined as digital representations of fiat currency and are classified as commodities rather than specified investments under the FSMR (**FSMR**). The FSRA's new framework distinguishes FRTs from other stablecoins by ensuring they maintain a stable value through backing with liquid assets. Unlike traditional stablecoins, which may be backed by volatile assets, FRTs must be fully backed by the same fiat currency they represent, allowing them to function as reliable mediums of exchange.

The FSRA proposes a risk-based and proportionate approach to the issuance of FRTs, reflecting industry demand and aligning with best practices from leading jurisdictions. Key components of this framework include reserve asset requirements, which stipulate that FRT

issuers must maintain reserve assets consisting solely of cash and high-quality liquid investments in the same currency as the FRT. The minimum capital requirement is set at $2 million or the issuer's annual audited expenditure, whichever is higher.

Additionally, holders of FRTs must be able to redeem their tokens at par value within two business days of a redemption request, ensuring liquidity and stability in the market. Issuers will also be required to conduct annual stress tests to assess their ability to meet redemption requests during adverse market conditions, including evaluating liquidity stress and operational risks. Furthermore, reserve assets must be held separately with third-party custodians to ensure insolvency remoteness, thereby protecting token holders' interests.

In terms of compliance, issuers located within the ADGM intending to offer FRTs must seek a Financial Services Permission (**FSP**) for providing money services. If an issuer's fiat-backed stablecoin is fully backed by its underlying fiat currency, the funds held would be classified as Client Money, necessitating compliance with the Client Money provisions outlined in the Conduct of Business Rulebook (**COBS**).

NFTs: NFTs are cryptographic assets on a DLT with unique identification codes and metadata that distinguish them from each other. Unlike virtual assets, they cannot be replicated, thus cannot be traded or exchanged at equivalency.

The FSRA does not currently have a formal regulatory framework for NFTs. However, in certain circumstances, the FSRA allows NFT activities to be undertaken within ADGM but only by regulated and active multilateral trading facilities providing a custody of virtual assets. Firms conducting own account or proprietary investments in NFTs are allowed to do so within ADGM. Relevant MTFs/Virtual Asset Custodians should establish within their ADGM group an unregulated, commercially licensed NFT entity, which would be primarily used to engage with NFT issuers and market participants. All NFT activities will be captured for KYC and AML/CTF purposes.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Abu Dhabi?

The FSRA in Abu Dhabi acknowledges the impact of the virtual asset industry, including decentralised finance (**DeFi**) activities, and established a comprehensive regulatory framework in 2018. This framework includes regulations and rules aimed at protecting investors, maintaining market integrity, and addressing potential financial stability risks.

It defines virtual assets as commodities, requiring licensing for entities involved in regulated activities with VAs in ADGM. The framework oversees and mitigates risks in the DeFi sector, meeting the expectations of innovators and traditional financial institutions for transparency in a regulated environment.

Entities using 'Digital Securities' in ADGM must comply with the FSRA's AML/CFT framework, potentially subjecting DeFi activities to AML/CFT regulations in Abu Dhabi. DeFi activities, like lending virtual assets, fall under the Regulated Activity of "Operating a Crypto Asset Business," necessitating authorisation as an OCAB Holder from the FSRA. The OCAB framework applies to individuals or entities carrying out regulated activities involving crypto assets, ensuring regulation of DeFi activities involving virtual assets in Abu Dhabi. OCAB

Holders must comply with regulatory requirements, including capital, AML/CFT, international tax reporting, technology governance, and market abuse prevention.

Given the evolving nature of DeFi, FSRA regulatory guidelines are expected to adapt. In short, DeFi activities, such as lending virtual assets, are regulated in Abu Dhabi under the FSRA's virtual asset framework to enhance transparency and manage risks for investors and stakeholders in the DeFi sector.

Are there any restrictions on issuing or publicly offering virtual assets in Abu Dhabi?

There are specific restrictions and requirements for issuing or publicly offering virtual assets in Abu Dhabi. They are laid out in detail in the "Guidance – Regulation of Digital Securities Activities in ADGM" and FSMR 2015, according to which, any person intending to conduct an Initial Coin Offering (**ICO**) or Initial Token Offering (**ITO**) in or from the ADGM must comply with the ADGM FSMR. The ICO or ITO issuer is required to obtain approval as an OCAB Holder and meet specific disclosure requirements.

Additionally, the Issuer must file a prospectus with the authorities and comply with other relevant regulations in addition to FSMR. In addition to obtaining approval as an OCAB holder, ICO and ITO issuers must meet other specific regulatory requirements and disclose various types of information. Regarding disclosure requirements, ICO and ITO issuers must provide clear, concise, and meaningful information about the virtual assets, the business, and the risks involved. This includes specific information about the issuer and their management team, the proposed use of funds, the intended purpose of the virtual assets, and any relevant liquidity or market-making arrangements.

Additionally, the guidance document provides specific requirements for the content and format of the Digital Offering Memorandum (**DOM**) and the Information Memorandum (**IM**) depending on the type of virtual asset being offered. Moreover, the guidance document sets out eligibility criteria for prospective OCAB Holders, including a requirement to substantiate their experience in investment, trading or custody of virtual assets and an assurance that their key insiders are of appropriate fitness and propriety. Furthermore, entities seeking to conduct an offering of digital securities must comply with AML/CFT Framework, including the adoption of international best practices.

It is important to note that these requirements are not exhaustive, and depending on the specific situation, there may be additional regulations and requirements that the issuer must meet.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in Abu Dhabi?

1. Here's an elaboration regarding the exemptions to the restrictions on issuing or publicly offering virtual assets given in FSRA Regulation, 2015:

    1.1 *Exemption for securities of an Exempt Offeror*: The Regulator may exclude the application of any requirements for the public offering of securities issued or guaranteed by an Exempt Offeror. An Exempt Offeror is defined as a person that

is listed on a register maintained by the Regulator. Therefore, securities offered by such persons may not be subject to the normal requirements for public offerings.

1.2 *Exemption for securities unconditionally and irrevocably guaranteed by an Exempt Offeror*: Securities unconditionally and irrevocably guaranteed by an Exempt Offeror may also be excluded from requirements for public offerings. This likely means that if an Exempt Offeror guarantees the issuer of a security's ability to repay it, that security may not be subject to the normal requirements for public offerings.

1.3 *List of Exempt Offerors maintained by the Regulator*: As mentioned above, the Regulator maintains a list of Exempt Offerors. The Regulator has the power to make rules for those wishing to be included on the list of Exempt Offerors. This gives the Regulator control over the entities that may be exempt from requirements for public offerings.

1.4 *Exemption from prospectus requirements possible under certain circumstances*: There may be circumstances under which a person is exempted from the requirements for preparing and filing a prospectus, which is a disclosure document that provides investors with material information about securities being sold in a public offering. Such circumstances include when securities are offered only to specified categories of persons, such as high net worth individuals and institutions.

2. Other Exemptions:

2.1 *Trading of Recognised Securities*: Communication related to the trading of securities on a Recognised Investment Exchange (**RIE**) is exempt.

2.2 *Compliance Reporting*: Communication made for ongoing reporting requirements of the FSRA or a Recognised Investment Exchange is exempt.

2.3 *Other Prescribed Exemptions*: Certain communications prescribed in rules as exempt are also recognised.

3. In addition, specific exemptions apply to:

3.1 *Central Banks*: Exempt from regulatory restrictions due to their authority in issuing legal tender and maintaining financial system stability.

3.2 *Regulated Financial Institutions*: Allowed to offer virtual assets for internal business or financial group use only.

3.3 *Governments, Governmental Bodies, or International Organisations*: Exempt for efficient budget management and diverse transaction processing in government affairs.

3.4 *Retail Activities*: Persons using virtual assets solely for non-specified investment purchases, such as flights or electronics, are exempt.

3.5 *Regulator-Specified Purposes*: Exemptions may be granted for specific purposes as prescribed by the regulator. Entities benefiting from exemptions must still comply

with anti-money laundering and counter-financing of terrorism regulations in the United Arab Emirates.

3. Regulation of VASPs in Abu Dhabi

Are VASPs operating in Abu Dhabi subject to regulation?

Yes, VASPs operating in Abu Dhabi are subject to regulation under the FSMR 2015. Key regulatory requirements include registration and licensing, where VASPs must register with the FSRA and obtain the necessary licenses to operate. This process involves providing detailed information about their financial standing, management structure, legal status, and ownership, with the FSRA conducting thorough assessments to ensure that only qualified entities are licensed. Compliance with AML/CFT regulations is mandatory; VASPs must implement comprehensive operational measures, customer due diligence processes, and ongoing monitoring to mitigate risks associated with illicit activities. Transparency obligations require providers to disclose service details, terms, and conditions clearly to customers, ensuring that they are well-informed about the services they are utilising. Furthermore, VASPs are obligated to maintain accurate transaction and customer records for a minimum of five years, with the FSRA reserving the right to access these records for regulatory oversight and compliance verification.

To protect customer data effectively, the FSRA has issued specific cybersecurity guidelines that VASPs must follow. These guidelines require providers to implement security measures to safeguard sensitive information against breaches or cyber threats. Recent developments include increased collaboration with other regulatory bodies within the UAE, such as the Securities and Commodities Authority (**SCA**) and the Virtual Assets Regulatory Authority (**VARA**). This collaboration aims to create a cohesive regulatory environment across different Emirates while promoting innovation in the virtual asset sector. Additionally, there is an ongoing consultation process inviting feedback from industry stakeholders regarding potential updates to existing regulations governing VASPs. The FSRA is also exploring new regulatory measures to address issues such as consumer protection, product suitability, and the promotion of responsible practices among VASPs.

Are VASPs providing virtual asset services from offshore to persons in Abu Dhabi subject to regulation in Abu Dhabi?

According to the FSRA's Guidance on Regulation of Crypto Asset Activities in ADGM, virtual asset providers that provide virtual asset services from offshore to persons located in Abu Dhabi may be subject to regulation in Abu Dhabi if their activities involve the use of virtual assets that are deemed a security, commodity, or derivative under the ADGM's regulations. This means that such VASPs will need to comply with any relevant regulatory requirements and obtain appropriate licensure from the FSRA if their activities are deemed to fall under the scope of ADGM's regulatory framework.

Additionally, the FSRA has indicated that it will take a risk-based approach to regulating VASPs, taking into account factors such as the nature and complexity of the virtual asset services provided, the types of virtual assets used, and the risks posed to consumers and market integrity.

It is important to note that this guidance is subject to change, and VASPs operating from offshore should seek legal advice to determine their compliance obligations under the ADGM's regulatory framework.

What are the main requirements for obtaining licensing / registration as a VASP in Abu Dhabi?

The requirements for obtaining licensing/registration as a virtual asset provider in Abu Dhabi are outlined in the FSRA's Guidance on Regulation of Crypto Asset Activities in ADGM (the "Guidance"). According to the Guidance, a VASP that conducts Crypto Asset Business in or from the ADGM must be authorised by the FSRA of ADGM as a Regulated Crypto Asset Business (**RCAB**).

The following are the main requirements for obtaining an RCAB license in Abu Dhabi:

1. *Eligibility requirements*: To be considered for an RCAB license, the VASP must meet the following eligibility requirements:
    - 1.1 Be duly incorporated under the relevant UAE laws and regulations and provide evidence of its incorporation,
    - 1.2 Have a clear and specific business plan,
    - 1.3 Have appropriate systems and controls in place, including strong AML/CFT controls, policies, and procedures,
    - 1.4 Have adequate financial and non-financial resources to carry on its Crypto Asset Business,
    - 1.5 Have sufficient technology resources to ensure the safe and efficient conduct of its operations in accordance with ADGM regulations,
    - 1.6 Show that the past and current performance of any of its directors, officers, or senior management do not pose any concerns to the FSRA,
    - 1.7 Do not present any significant risks to the interests of customers, the ADGM, or the wider financial system, and
    - 1.8 Carry on its activities in accordance with the applicable ADGM regulations, including those related to AML/CFT.
2. *Application and supporting documentation*: The VASP must submit an application for authorisation to the FSRA, which should include:
    - 2.1 A detailed business plan of the Crypto Asset Business,
    - 2.2 A detailed description of the Crypto Asset Business, including the proposed activities and services to be offered,

2.3 A detailed description of the Crypto Assets that will be offered, including a rationale for their selection,

2.4 Details of the VASP's compliance arrangements, including AML/CFT policies and procedures,

2.5 Details of the VASP's governance arrangements, including details of relevant individuals involved in the business,

2.6 Details of the VASP's financial resources, including details of its capital and liquidity,

2.7 A clear description of the information technology systems, platforms, and infrastructure to be used,

2.8 Details of the VASP's audited financial statements and tax returns,

2.9 Details of the VASP's ownership structure, and

2.10 Any other supporting documentation that the FSRA may request from time to time.

3. *Additional requirements*: During the application process, the VASP must demonstrate that it has adequate systems and controls in place to monitor the risks associated with Crypto Asset Business activities, including the risks of conducting business in a rapidly evolving and innovative ecosystem. They should also have the ability to comply with regulatory requirements, and ensure the protection of consumer interests. The FSRA may conduct on-site visits at the VASP's premises to assess compliance with the applicable regulatory requirements. The VASP must also maintain adequate insurance coverage to ensure that losses or claims resulting from its activities are covered.

4. *Licensing Fees*: In terms of licensing fees, the FSRA maintains a structured fee schedule for VASPs operating within the ADGM. These fees are designed to reflect the nature and scope of the activities being conducted. Notably, if an applicant intends to conduct multiple regulated activities related to virtual assets, the fees will be cumulative, meaning that each regulated activity incurs its own set of authorisation and supervision fees. This can add up significantly depending on the number of services offered. The initial application fee for obtaining a Financial Services Permission to conduct virtual asset activities is set at AED 10,000, followed by annual supervision fees that vary based on the scale and complexity of operations. Additionally, applicants should consider potential extra costs associated with compliance, such as those related to AML training and systems implementation, which are mandatory under regulations.

What are the main ongoing requirements for VASPs regulated in Abu Dhabi?

Ongoing Requirements for Virtual Asset Service Providers in Abu Dhabi:

1. *Governance and Compliance*: VASPs must establish effective governance structures and risk management systems to adhere to ADGM regulations, covering areas such as anti-money laundering, data protection, and cybersecurity.

2. *Financial Reporting and Audit*: Regular submission of financial reports to the FSRA and undergoing periodic audits by accredited auditors are mandatory for VASPs.
3. *Consumer Protection*: VASPs are required to implement internal procedures for handling consumer complaints and grievances in a satisfactory manner.
4. *Record-Keeping*: Accurate and comprehensive record-keeping of activities, transactions, and customer information is a key requirement for VASPs.
5. *Compliance Monitoring*: The FSRA may conduct routine compliance monitoring of VASPs to ensure ongoing adherence to regulatory requirements.
6. *Notification and Reporting*: VASPs must promptly notify the FSRA of any material changes to their business plan, ownership, or other relevant information. Reporting suspicious transactions or activities and cooperating with regulatory investigations is essential.

It is important to note that these requirements are subject to potential changes and may vary based on the specific activities and business model of each VASP.

What are the main restrictions on VASPs in Abu Dhabi?

The main restrictions on virtual asset providers regulated in Abu Dhabi include:

1. VASPs operating in Abu Dhabi must implement measures to comply AML/CFT laws. This includes thorough customer identification, monitoring, and reporting of suspicious transactions.
2. Accepting deposits from markets in the United Arab Emirates (**U.A.E**) is strictly prohibited for VASPs unless they have obtained the necessary authorisation.
3. VASPs are not allowed to conduct foreign exchange transactions involving the U.A.E Dirham on behalf of clients unless explicitly authorised by the regulator.
4. Compliance with Market Abuse Regulations is mandatory for VASPs, preventing engagement in activities such as insider dealing, market manipulation, or spreading false information.
5. Engaging in regulated activities without proper authorisation from the Financial Services Regulatory Authority is illegal for VASPs.
6. Using intragroup transactions to circumvent margining requirements set by the regulator is strictly prohibited.
7. VASPs must charge reasonable and non-excessive fees when conducting regulated activities, avoiding the prohibition on charging excessive fees or commissions.
8. Engaging in unfair or misleading practices, such as providing false information to clients, is strictly prohibited for VASPs.
9. Compliance with all relevant laws and regulations, including data protection and cybersecurity requirements, is mandatory for VASPs.
10. Marketing services to retail investors without the appropriate authorisation from the FSRA is restricted for VASPs.

What are the main information that VASPs have to make available to its customers?

Regulated virtual asset trading platforms are required to make available to their customers information on:

1. The risks associated with virtual assets and their products and services;
2. the terms and conditions applicable to the products and services, including the fees and commissions associated with their use;
3. the methods used to calculate prices, including asset valuations, price feeds, and other relevant information;
4. the rules governing the exchange, including trading procedures, settlement, and delivery systems, and any other relevant information;
5. procedures for dealing with complaints and disputes;
6. any material changes or developments in the platform and its products and services; and
7. relevant regulatory and compliance information, including AML/CFT laws and regulations, cybersecurity, and data protection requirements.

The trading platforms must also have effective risk management policies and procedures to ensure the safety and integrity of their customers' funds and assets.

What market misconduct legislation/regulations apply to virtual assets?

The FSMR 2015 provides for the regulation of Markets and Trading:

1. The market abuse provisions make it illegal for persons to engage in any behavior that could create or is intended to create a false or misleading impression as to the market in or the price or value of any financial instrument. This is in line with the regulation's objective of ensuring that the financial markets in the ADGM are supported by safe and efficient infrastructure and foster financial stability, including the reduction of systemic risk.
2. The regulations also require that virtual asset trading platforms provide comprehensive information on the products and services they offer to their customers. This includes information on fees and commissions, rules governing trading, and procedures for dealing with complaints and disputes.
3. The virtual asset trading platforms should also comply with AML and CFT laws and regulations.
4. They should also have effective risk management policies and procedures to ensure the safety and integrity of their customers' funds and assets.
5. The regulations also impose obligations on market operators to provide customers with information on market rules and procedures and to ensure the fair and transparent operation of the market.

6. Moreover, the regulations empower the regulator to take action against regulated entities, including virtual asset trading platforms, who breach any provisions of the regulations, including the market abuse provisions, by imposing fines, sanctions, and other measures as deemed fit by the regulator.

4. Regulation of other crypto-related activities in Abu Dhabi

What is the regulatory framework for crypto fund managers of venture capital in Abu Dhabi?

The "Guidance - Regulatory Framework for Fund Managers of Venture Capital Funds", issued by the FSRA, establishes a regulatory framework for Venture Capital (**VC**) Fund Managers. This framework is applicable to managers of crypto funds if they adhere to the explained criteria in FUNDS. The regulatory framework encompasses eligibility criteria, authorisation requirements, and ongoing regulatory obligations.

Eligibility criteria stipulate that applicants must demonstrate that each VC Fund they manage meets specific conditions outlined in FUNDS. These conditions include restricting a VC Fund to being a closed fund, investing solely in the securities of non-listed early-stage companies available exclusively to professional clients. Moreover, there are limits on the maximum subscription amount, subject to FSRA approval.

Authorisation is necessary for a VC Manager to engage in the regulated activity of managing a collective investment fund, including fund management activities related to a VC Fund. VC Managers in Abu Dhabi also need a Financial Services Permission (**FSP**) for regulated activities related to VC Funds and co-investments by third parties.

Additional requirements pertain to approved and recognised persons. For instance, a Senior Executive Officer (**SEO**) must have a minimum of ten years' relevant experience, and a Licensed Director or Licensed Partner should possess at least five years' experience in operating a VC or private equity fund or demonstrate in-depth industry expertise.

Regarding ongoing regulatory requirements, VC Managers must have the necessary expertise, either in-house or outsourced, to prepare and oversee financial accounts. While appointing a Finance Officer is not mandatory, the VC Manager must appoint a Compliance Officer (**CO**) and a Money Laundering Reporting Officer (**MLRO**), both independent of the front office investment function. These functions may be carried out by the same individual, in-house, or outsourced, and need not be dedicated or independent of other control functions.

In conclusion, managers of crypto funds are regulated in Abu Dhabi under the "Guidance - Regulatory Framework for Fund Managers of Venture Capital Funds" if they adhere to the eligibility criteria, authorisation requirements, and ongoing regulatory obligations.

Are distributors of virtual asset funds regulated in Abu Dhabi?

According to the FSMR 2015, distributors of virtual asset funds are subject to regulation in Abu Dhabi. Promoting, dealing in, or managing a fund may constitute a regulated activity, for which the entity must have authorisation from the regulator, the FSRA.

The regulations define a fund as a scheme or arrangement having as its object or effect both pooling of investor funds and spreading of risk over a number of investments. A virtual asset fund's distribution typically includes promoting it as an investment opportunity to potential investors, which can lead to the regulated activity of dealing in a fund.

Moreover, entities that wish to engage in regulated activities must obtain authorisation from the FSRA. Among other things, entities must demonstrate that they have the required knowledge, skills, and expertise to carry out the regulated activities and effectively assess risks and undertake due diligence.

Therefore, distributors of virtual asset funds should seek authorisation from the FSRA in Abu Dhabi and ensure they comply with all relevant regulations. Distributing unauthorised investment opportunities can result in severe penalties, such as fines and reputational damage.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Abu Dhabi?

1. The FSMR 2015 require that entities engaged in regulated activities, such as intermediating the trading of virtual assets or advising clients on virtual assets, obtain authorisation from the FSRA. Intermediating the trading of virtual assets or advising on virtual assets may be considered regulated activities under the regulations, so entities must seek authorisation from the FSRA. Entities are required to demonstrate that they have the necessary knowledge, skills, and expertise to carry out these activities, assess risks, and conduct due diligence, among other things.
2. Furthermore, as part of the authorisation process, entities may need to comply with additional requirements, such as capital requirements and reporting obligations.
3. In summary, intermediaries dealing with virtual assets or advising clients on virtual assets must seek authorisation from the FSRA and comply with relevant regulations to operate legally in Abu Dhabi.
4. The ADGM also provides guidance on the regulation of virtual assets through its Crypto Asset Regulatory Framework. The framework sets out regulations relating to activities involving virtual assets, such as exchanges, custodians, and intermediaries. It requires that participants seeking to provide services related to virtual assets obtain appropriate licenses and meet specific obligations, including prudential requirements, capital adequacy, and risk management.
5. Furthermore, the ADGM has issued guidance on Initial Coin Offerings (**ICOs**), which may be used to raise capital through the issuance of digital tokens. The guidance sets out the requirements and procedures for the issuance of digital tokens and specifies

that ICO issuers must comply with anti-money laundering and counter-terrorist financing regulations.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in Abu Dhabi?

Abu Dhabi is advancing its regulatory framework concerning cryptocurrencies and related activities. The FSRA of the ADGM is set to introduce comprehensive regulations specifically targeting DeFi activities, alongside amendments to existing virtual asset regulations.

One notable initiative is the FSRA's recent public consultation on a proposed regulatory framework for FRTs, a category of stablecoins. Stakeholders are invited to provide feedback by October 3, 2024, after which the FSRA will review comments and finalise the framework. This proposed regulation aims to ensure that FRT issuers maintain adequate reserve assets and operate under stringent operational requirements, reflecting a proactive approach to managing risks associated with stablecoins.

Moreover, the FSRA is incorporating innovative technologies such as Artificial Intelligence into its regulatory processes, enhancing efficiency and enabling a 'Regulation as a Service' model. This initiative aims to streamline compliance for virtual asset providers while ensuring oversight. The FSRA is also updating its existing virtual asset framework to better align with international guidelines, particularly those set forth by the Financial Action Task Force (**FATF**). This includes terminology adjustments, expanding the regulatory scope to encompass a wider range of crypto transactions and Initial Coin Offerings (**ICOs**), and refining compliance requirements for virtual asset activities. Additionally, the FSRA has recognised the growing significance of NFTs within the digital asset ecosystem. While it has not yet established a formal regulatory framework for NFTs, it is open to their activities being conducted under specific conditions by regulated entities within the ADGM.

Has there been any notable events in Abu Dhabi that has prompted regulatory change recently?

Significant event contributing to the evolving regulatory environment in Abu Dhabi has been the growing interest of major crypto firms in the region. Companies such as Copper Technologies, Paxos Trust, and eToro Group Ltd. have shown interest in Abu Dhabi due to investor-friendly policies, a supportive regulatory framework, and a network of partners. Abu Dhabi's approach in aligning with innovation in digital assets, as seen in the ADGM 2024 business plan, is playing a crucial role in positioning the city as an attractive destination for crypto businesses. The influx of major players into the Abu Dhabi crypto market is influencing the local regulatory approach to be more accommodating and forward-thinking.

Furthermore, Abu Dhabi has introduced a new blockchain and cryptocurrency body, the Middle East, Africa, and Asia Crypto and Blockchain Association (**MEAACBA**). Supported by the ADGM, this non-profit organisation aims to bring together industry players to address

challenges in the sector and integrate digital assets into key economic sectors. MEAACBA includes major cryptocurrency platforms as partners and focuses on developing educational campaigns, creating frameworks for blockchain ecosystems, and advancing financial inclusivity. This initiative is part of the broader UAE efforts to integrate blockchain into its economy and government, showcasing Abu Dhabi's commitment to being a leader in the fintech space.

Another significant event involved Binance, a leading cryptocurrency exchange, withdrawing its application for managing a collective investment fund in Abu Dhabi. This decision, unrelated to Binance's legal challenges in the United States, where the company faced a $4.3 billion settlement, was part of the company's global reassessment of licensing requirements and strategic growth priorities. It is worth noting that Binance still provides crypto custody services in Abu Dhabi, and the withdrawal of the application was explicitly stated to be unrelated to the U.S. settlement.

Also, in August 2024, Abu Dhabi has introduced significant regulations specifically targeting FRTs. The introduction of FRT regulations aims to ensure that these stablecoins maintain a stable value through backing by high-quality, liquid assets denominated in a single fiat currency.

6. Pending litigation and judgments related to virtual assets in Abu Dhabi (if any)

There was an incident involving an Abu Dhabi businessman who lost $20,000 in a cryptocurrency scam. This case is significant as it highlights the growing issue of crypto-related frauds. The businessman was deceived by a scammer posing as a previous vendor. After establishing trust, the scammer convinced him to invest in a cryptocurrency trading platform. Initially, the businessman made a small investment and saw a return, which encouraged him to invest a larger sum of $20,000. However, it turned out to be a scam, and he was unable to recover his investment.

This case exemplifies the risks associated with cryptocurrency investments, especially regarding scams and fraudulent schemes.

In another case related to cryptocurrency involved the conviction of nine individuals and six companies for money laundering and cryptocurrency trading. The defendants were involved in a fraudulent scheme where they lured victims into investing in a shell company, claiming specialisation in digital currency trading. The Abu Dhabi Criminal Court sentenced four of the accused to ten years in prison and a fine of AED 10 million each, with deportation orders post-sentence for all except the second accused. The companies involved were fined AED 50 million each. This case was a result of coordinated efforts by various authorities to combat money laundering and financial crimes related to cryptocurrency trading.

7. Government outlook on virtual assets and crypto-related activities in Abu Dhabi

The Abu Dhabi government has implemented strategic measures to regulate virtual currencies, notably through the establishment of the ADGM. Operating as a financial free zone with an autonomous regulatory framework under common law, the ADGM is designed to cultivate a regulatory environment conducive to the growth of the fintech industry, fostering innovation while upholding market integrity.

In 2018, the ADGM introduced regulatory frameworks governing cryptocurrencies and initial coin offerings (**ICOs**). These frameworks highlight the market infrastructure supporting cryptocurrencies, including exchanges, intermediaries, and custodians. Criteria for ICO issuers, encompassing disclosure requirements and obligations related to anti-money laundering and counter-terrorist financing, were also established.

Furthermore, the ADGM initiated a regulatory sandbox in 2019, providing a controlled environment for fintech companies to test innovative ideas and products. This platform facilitates the exploration of regulatory implications and new business models.

Abu Dhabi's collaboration with the International Monetary Fund (**IMF**) to establish a fintech center of excellence is a noteworthy endeavor. This center serves as an innovation hub for the fintech industry, offering global advice and developing policies to encourage the adoption of new technology in the financial sector.

8. Advantages of setting up a VASP in Abu Dhabi

Abu Dhabi's government has crafted a supportive regulatory environment for fintech companies. This environment emphasises investor protection, market integrity, and financial stability. Abu Dhabi's collaboration with the IMF in the establishment of a fintech center of excellence is a noteworthy endeavor. This center serves as an innovation hub for the fintech industry, offering global advice and developing policies to encourage the adoption of new technology in the financial sector.

Moreover, Abu Dhabi offers a developed infrastructure, a conducive business environment, and a strategic location between East and West, facilitating global market access for businesses. The region's substantial investments in technological innovation and digital transformation initiatives are advantageous for fintech companies. Abu Dhabi's financial services industry, with leading institutions, asset managers, and investment firms, provides an extensive network of potential partners and customers for VASPs in the region.

September 2024

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Bahrain

1. Virtual asset laws and regulations in Bahrain

Bahrain's regulations for cryptocurrency businesses have evolved since 2017, and the country is now seen as a pioneer in the Middle East region for its cryptocurrency and blockchain regulations The Central Bank of Bahrain (**CBB**) has established clear framework for licensing and regulation of crypto-asset services. The framework deals with licensing, governance, minimum capital, risk management, AML/CFT, conflicts of interest, business conduct, safeguarding und clients' money, and cybersecurity for crypto-asset services. The regulatory framework is internationally based, with a focus on best practices that particularly relate to money laundering risk-based approach. The country has also established a regulatory sandbox for new and innovative Fintech products, including those related to digital assets.

In March 2023, the CBB issued amendments regarding crypto-assets following a consultation process with industry stakeholders, to cater to the ongoing developments in the crypto-assets markets and comply with the industry's best practices. The amendments also describe the requirements for safeguarding the client's assets to provide a higher level of protection to the investor.

What is considered a virtual asset in Bahrain?

In Bahrain, a virtual asset is defined as a digital representation of value that can be digitally traded and functions as a medium of exchange, unit of account, or store of value. It does not have legal tender status in any jurisdiction and is neither issued nor guaranteed by a jurisdiction.

The CBB has categorises virtual assets into four main types: Payment Tokens, Utility Tokens, Asset Tokens, and Hybrid Tokens. Combined they are called as 'Accepted Crypto Assets'. The

CBB has the power to evaluate whether a crypto-asset is appropriate for trading before accepting it as an 'Accepted Crypto Asset'.

1. *Payment Tokens*: These are akin to cryptocurrencies, like Bitcoin, and are intended to be used as a means of payment for acquiring goods or services or for value transfer. They are usually decentralised and do not confer any claims on their issuer.
2. *Utility Tokens*: These provide access to a specific application or service but are not accepted as a means of payment for other applications. They do not represent a claim on the issuer.
3. *Asset Tokens*: These are more aligned with traditional securities as they represent assets such as equity or debt claims on the issuer. Asset Tokens promise a share in future company earnings or capital flows, analogous to equities, bonds, or derivatives.
4. *Hybrid Tokens*: These have features of one or more of the other token types.

What are the relevant laws and regulations?

The table given below is a comprehensive list of the regulatory framework for virtual assets in Bahrain. It includes information on the various regulations and guidelines that govern the use of virtual assets in the country.

Event	Description
Launch of Regulatory Sandbox	The CBB launched the regulatory sandbox to test fintech solutions, including those involving crypto-assets.
Public Warning	The CBB issued a public warning about the risks associated with cryptocurrencies, such as Bitcoin and Ethereum, and emphasised that they were not recognised as legal tender in Bahrain.
Launch of Bahrain FinTech Bay	Bahrain FinTech Bay, the largest FinTech hub in the Middle East, was launched to foster innovation in financial technologies, including blockchain and virtual assets.
Comprehensive Regulatory Framework	The CBB introduced a comprehensive regulatory framework for crypto-asset platforms, covering licensing, governance, risk management, consumer protection, and AML/CFT requirements.
Amendments to Regulatory Framework	The CBB amended its regulatory framework for crypto-assets to align with the standards set by the Financial Action Task Force (**FATF**), focusing on enhancing AML/CFT measures.
Issuance of Crypto Assets Module (**CRA**)	The CBB issued the Crypto Assets Module under its Capital Markets Rulebook, providing comprehensive regulations for digital assets services.
Public Consultations	The CBB invited public consultations and feedback on the draft regulations.
Final Regulations	The CBB issued the final CRA regulations after the consultation process.
Amendments to Crypto Assets Module	The CBB issued amendments to the Crypto Assets Module to cater to ongoing developments in the crypto-assets markets and comply with industry best practices.

Who do such laws and regulations apply to?

The laws and regulations related to virtual assets in Bahrain apply to any individual or entity that engages in the business of virtual assets services, including trading, dealing, advisory, or portfolio management services in accepted crypto-assets, either as principal, agent, custodian or as a crypto-asset exchange within or from Bahrain.

Additionally, these laws and regulations also apply to any platform operator who creates or administers crypto-assets, publishes or uses software for the production or mining of crypto-assets, and runs a loyalty program.

Who are the relevant regulatory authorities in relation to virtual assets in Bahrain?

The relevant regulatory authorities in relation to virtual assets in Bahrain include:

1. *CBB*: The CBB is responsible for regulating and overseeing the provision, use, and exchange of virtual assets in Bahrain. It has issued the CRA under its Capital Markets Rulebook, which regulates various digital assets services conducted in and from Bahrain.
2. *Bahrain Monetary Agency (**BMA**)*: The BMA was the central bank of Bahrain until it was succeeded by the CBB on September 7, 2006. The BMA was responsible for various regulatory tasks, including the issuance of currency, oversight of financial institutions, and the implementation of monetary policy.

What are the penalties for breaches of virtual asset laws and regulations in Bahrain?

If an entity or individual breaches the virtual asset laws and regulations in Bahrain, they may be subject to various penalties, including monetary fines, revocation of license, and even imprisonment, depending on the severity of the breach. The penalties and punishment for virtual asset-related offenses are explained in the regulations issued by the Central Bank of Bahrain, under its Rulebook Volume 6.

The penalties for offenses related to virtual assets can range from monetary fines up to BHD 100,000 in some cases, revocation of licenses, and imprisonment. For instance, if an entity or an individual receives compensation for providing unlicensed virtual asset services, they may be fined up to BHD 50,000. Operating a crypto-asset exchange without a valid license may lead to imprisonment for a period of up to five years or a fine of up to BHD 500,000.

Furthermore, a sentence of imprisonment and/or a maximum fine of BHD 30,000 may be imposed on the perpetrator who has unlawfully accessed an IT system. Also, an imprisonment sentence and/or maximum fine of BHD 1,00,000 may be imposed on the perpetrator who uses encryption in order to commit or conceal any of the crimes provided for in the Law or any other law.

2. Regulation of virtual assets and offerings of virtual assets in Bahrain

Are virtual assets classified as 'securities' or other regulated financial instruments in Bahrain?

In Bahrain, virtual assets are not generally classified as 'securities' or other regulated financial instruments. However, the CBB provides a regulatory framework that can classify certain virtual assets as financial instruments depending on their characteristics and usage.

1. *Payment Tokens*: These are typically treated as virtual assets and not classified as securities. They are regulated under the CRA for their use in payments, trading, and transfers.

2. *Asset/ Security Tokens*: If a virtual asset exhibits characteristics similar to traditional securities (e.g., representing shares, bonds, or other investment instruments), it may be classified as a security and subjected to relevant securities regulations under the CBB's oversight.
3. *Utility Tokens*: Tokens providing access to a product or service are generally not considered securities but are regulated as virtual assets under the CRA rules.

Are stablecoins and NFTs regulated in Bahrain?

1. *Stablecoins*: Stablecoins in Bahrain are regulated under the framework provided by the CBB. Stablecoins are digital currencies designed to minimise price volatility by pegging their value to a stable asset, like the US dollar or other traditional currencies.

   Regulatory framework: The CBB's CRA applies to stablecoins, similar to other virtual assets. This module consists of licensing requirements, operational standards, and compliance obligations for entities dealing with stablecoins. Entities offering stablecoin-related services, such as issuance, trading, or custodial services, must obtain a license from the CBB and adhere to regulations concerning minimum capital requirements, cybersecurity, and client asset protection.

   Compliance requirements: Licensed entities must implement Anti-money laundering and counter-terrorism financing (**AML/CTF**) measures. Regular reporting and auditing are mandatory to ensure transparency and regulatory compliance. Stablecoin issuers must maintain sufficient reserves of the pegged asset to back the value of the issued stablecoins.

2. *NFTs*: NFTs are unique digital tokens that represent ownership of a specific asset or piece of content, such as art, music, or in-game items. Currently, there are no specific regulations in Bahrain that directly address NFTs.

   However, NFTs may fall under the broader umbrella of the CBB's crypto-asset regulatory framework. Additionally, other laws and regulations in Bahrain, such as those related to intellectual property rights, consumer protection, AML/CFT, may also apply to NFTs and their creation, sale, and use.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Bahrain?

DeFi activities, including lending virtual assets, are regulated in Bahrain under the comprehensive regulatory framework established by the CBB. The CBB has issued detailed guidelines for DeFi and virtual assets, which include licensing requirements, minimum capital requirements, measures to safeguard client assets, technology standards, cybersecurity requirements, risk management requirements, reporting, notifications and approval requirements, conduct of business obligations, and rules for the prevention of market abuse and manipulation. These regulations are explained in the CRA under the CBB's Capital Markets Rulebook.

The CRA regulate various digital asset services conducted in and from Bahrain, including dealing, broking, advisory, portfolio management, providing custody, and operating a digital assets exchange. Entities and individuals engaged in DeFi activities such as trading, dealing, advisory, or portfolio management services held in virtual assets either as principal, agent, custodian, or as a crypto-asset exchange within or from Bahrain must obtain a 'Bahrain Crypto Asset Service Provider License' from the CBB. These regulations also cover the practices and guidelines for lending, borrowing, and other DeFi activities, including requirements for minimum capital, risk management, standards of business conduct, and avoiding conflicts of interest. Furthermore, the regulations include measures required for safeguarding client or customer interests and managing cybersecurity risks.

Are there any restrictions on issuing or publicly offering virtual assets in Bahrain?

The CBB has implemented comprehensive regulations to govern the issuance and public offering of virtual assets in Bahrain. These regulations, explained in the CRA under its Capital Markets Rulebook. Following are the restrictions/requirements in relation to public offering of virtual assets in Bahrain:

1. *Licensing requirements*: Entities wishing to issue or publicly offer virtual assets in Bahrain must obtain a license from the CBB. The licensing process ensures that only qualified and compliant entities can operate in the market. The CBB requires detailed documentation and preliminary assessments to determine the eligibility of applicants.
2. *Minimum capital requirements*: To ensure financial stability, entities issuing or publicly offering virtual assets must meet minimum capital requirements set by the CBB. These requirements help cover potential losses and maintain the financial health of the entities.
3. *Measures to safeguard client assets*: Entities must implement robust measures to safeguard client assets, including maintaining separate accounts for client assets, ensuring the security and integrity of client data, and implementing comprehensive risk management procedures.
4. *Technology standards*: The CBB mandates that entities meet specific technology standards to manage and store virtual assets.
5. *Cybersecurity requirements*: To protect against cyber threats, entities must adhere to stringent cybersecurity requirements set by the CBB.
6. *Risk management requirements*: Entities are required to implement an extensive risk management system to identify, assess, and manage risks associated with virtual assets. Effective risk management is essential to mitigate potential risks and ensure the stability of the financial system.
7. *Reporting, notifications, and approval requirements*: Entities must report and notify the CBB about various activities, including the issuance and public offering of virtual assets, and any changes to their operations or management. This ensures ongoing compliance and allows the CBB to monitor the activities of licensed entities effectively.

8. *Conduct of business obligations*: Entities must comply with conduct of business obligations, ensuring they operate fairly and transparently. This includes not engaging in activities that could harm the stability and integrity of the financial system.
9. *Prevention of market abuse and manipulation*: To maintain market integrity, entities must prevent market abuse and manipulation. They are required to implement measures that prevent activities which could distort the market or harm its stability.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in Bahrain?

In Bahrain, while there are comprehensive regulations governing the issuance and public offering of virtual assets, certain activities are exempt from these restrictions as outlined by the CBB in the CRA under its Capital Markets Rulebook:

1. *Creation and mining of crypto assets*: Activities related to the creation or mining of crypto assets are not considered regulated services. This includes the development and dissemination of software used for creating or mining crypto assets.
2. *Loyalty programs*: Virtual assets issued as part of a loyalty or rewards program, where tokens are earned through engagement or purchases, are typically exempt. These tokens are not treated as investments and are used within a specific ecosystem or platform.
3. *Software development*: The development and use of software for creating or mining crypto assets do not fall under the regulated services category. This means that developers creating software tools for the crypto industry are generally exempt from needing a license.
4. *Activities deemed non-regulated by the CBB*: The CBB has the discretion to determine and exempt any other activity or arrangement that it does not consider as undertaking regulated crypto-asset services. This provides flexibility for the CBB to adapt to new developments and technologies in the crypto space.
5. *Private offerings*: If the offering is private and targets a small number of sophisticated investors rather than the general public, it might be exempt from full public offering regulations.
6. *Small-scale offerings*: Offerings below a certain monetary threshold may be exempt from extensive regulatory requirements, making it easier for smaller projects to raise funds.

3. Regulation of VASPs in Bahrain

Are VASPs operating in Bahrain subject to regulation?

VASPs operating in Bahrain are regulated and must comply with the requirements laid down in the regulatory framework issued by the CBB. CBB has been providing regulations to oversee and manage the 'Regulated crypto-asset services' in Bahrain with a view to

becoming the region's premier FinTech center. The regulatory framework also permits foreign entities already operating in other countries to apply for a cryptocurrency license with Bahrain and can operate in the country as an 'overseas crypto asset service licensee' after complying with the requirements of Bahrain company registration.

The regulatory framework sets out rules for the provision of 'Regulated crypto-asset services'. 'Regulated crypto-asset services' are defined as the conduct of any or any combination of the following types of activities:

1. Reception and transmission of orders: The reception from a client of an order to buy and/or sell one or more accepted crypto-assets and the transmission of that order to a third party for execution;
2. trading in accepted crypto assets as an agent;
3. trading in accepted crypto assets as a principal;
4. portfolio management;
5. investment advice; and
6. crypto-asset custody.

The CBB only allows Crypto-asset service licensees (and overseas crypto-asset service licensees) to provide services relating to 'Accepted Crypto Assets'. The CBB has the power to evaluate whether a crypto-asset is appropriate for trading before accepting it as an 'Accepted Crypto Asset'. The CBB takes into account various factors, including but not limited to, the security, traceability/monitoring, resolution mechanisms, geographical distribution, connectivity, market demand/volatility, type of distributed ledger used, the applicable consensus algorithm of the distributed ledger, innovation and practical applicability/functionality, and whether the crypto-asset has been traded on any darknet marketplaces.

Are VASPs providing virtual asset services from offshore to persons in Bahrain subject to regulation in Bahrain?

Yes, VASPs providing virtual asset services from offshore to persons in Bahrain are subject to regulation in Bahrain. According to the regulatory framework issued by the CBB, foreign entities that are already operating in other countries can apply for a crypto-asset license in Bahrain and operate in the country as an 'overseas crypto asset service licensee' after complying with the requirements of Bahrain company registration. These entities are subject to the same requirements and regulations as a Bahraini joint stock company providing regulated crypto-asset services.

Here are a few examples of VASPs that are providing virtual asset services from offshore to persons in Bahrain:

1. Binance, which is one of the largest cryptocurrency exchanges in the world, has obtained a license from the Central Bank of Bahrain to operate as an "overseas crypto asset service licensee" in Bahrain.

2. BitOasis, which is a Dubai-based cryptocurrency exchange, has also obtained a license from the Central Bank of Bahrain to operate as an "overseas crypto asset service licensee" in Bahrain. BitOasis provides virtual asset trading and storage services to customers in the Middle East and North Africa region, including Bahrain.

What are the main requirements for obtaining licensing / registration as a VASP in Bahrain?

The CBB provides licenses to VASPs under four categories, which are as follows:

1. *Type 1 Crypto Asset License*: This license is required for VASPs that provide custody services and hold a customer's cryptocurrencies. The minimum required capital is BHD 200,000. The annual licensing fee is 0.25% of the licensee's operational expenses, with a minimum of BHD 2,000 and a maximum of BHD 35,000.
2. *Type 2 Crypto Asset License*: This license is required for VASPs that provide exchange services or trading platforms that match buyers and sellers. The minimum required capital is BHD 50,000. The annual licensing fee is 0.25% of the licensee's operational expenses, with a minimum of BHD 2,000 and a maximum of BHD 25,000.
3. *Type 3 Crypto Asset License*: This license is required for VASPs that provide brokerage services to clients and make investments on their behalf. The minimum required capital is BHD 50,000. The annual licensing fee is 0.25% of the licensee's operational expenses, with a minimum of BHD 2,000 and a maximum of BHD 25,000.
4. *Type 4 Crypto Asset License*: This license is required for VASPs that provide advisory services related to cryptocurrencies, including research and analysis of cryptocurrencies. The minimum required capital is BHD 50,000. The annual licensing fee is 0.25% of the licensee's operational expenses, with a minimum of BHD 2,000 and a maximum of BHD 25,000.

Each category has its own specific requirements that VASPs need to meet to be eligible for licensing:

1. VASPs are required to be registered as a legal entity in Bahrain, either as a Bahraini Joint Stock Company or as an overseas company registered in Bahrain.
2. They must have a clear and detailed business plan that outlines proposed operations, personnel, risk management, and compliance program.
3. VASPs must maintain a compliance program to prevent money laundering, terrorism financing, and other financial crimes, rooted in the FATF Standards.
4. They must have a suitable organisational structure, administrative procedures, and internal controls.
5. VASPs must maintain adequate capital reserves, cybersecurity policies, and documentation policies and procedures, as well as meet other relevant requirements.
6. The application for a VASP license must include:
    6.1 Business plan covering expertise, technology, marketing, resources, outsourcing, financials;

6.2 risk assessment;

6.3 compliance manual;

6.4 details on client asset handling, custodians, complaints;

6.5 information on directors, executives, shareholders;

6.6 auditor and authorised representative details;

6.7 proposed safeguards for data protection and client assets; and

6.8 additional requirements apply for custody and exchange services to demonstrate capability to protect client assets.

7. Application Process: The application process involves:

7.1 Obtaining commercial registration from the Ministry of Industry and Commerce;

7.2 applying for the VASP license from the CBB, which takes approximately 60 days;

7.3 submitting notarised and legalised or apostilled foreign documents; and

7.4 paying the application fee, which ranges from BD 2,000 to BD 12,000 annually depending on the license category.

What are the main ongoing requirements for VASPs regulated in Bahrain?

The CBB has implemented a comprehensive set of ongoing requirements for VASPs to ensure compliance. Here are the main requirements:

1. *Client asset protection (CRA 8.1 Client Protection)*: VASPs are required to implement measures to protect client assets, including keeping client assets in separate accounts from the company's own assets, ensuring the security and integrity of client data, and regularly reconciling client accounts and conducting audits to prevent misappropriation of assets.

2. *Risk management (CRA-6.1 Risk Management)*: VASPs must have a risk management system in place. They need to identify, assess, and manage risks associated with their operations, implement policies and procedures to mitigate these risks, and regularly review and update their risk management strategies.

3. *Technology and Cybersecurity (CRA 5.1 Technology Governance and Cyber Security)*: The CBB issued mandates under CRA to meet requirements for licensing, minimum capital, client asset safeguarding, cybersecurity, risk management, AML/CFT compliance, and business conduct. VASPs must use cybersecurity controls, including multi-factor authentication, encryption, secure storage, and incident response plans.

   The Law on Combating Cybercrime (2014) criminalises offenses like illegal access, data and system interference, and IT fraud, with penalties up to 10 years imprisonment and fines up to BHD 200,000.

   The Personal Data Protection Law (2018) governs data collection, processing, storage, and transfer, requiring consent, security measures, data access, and appointing data protection officers, with violations fined up to 20,000 Bahraini Dinars.

The National Cybersecurity Framework by the National Cyber Security Center (**NCSC**) includes cybersecurity governance, technical controls, incident response, and audit requirements, with sector-specific controls for banking, insurance, and payments.

4. *Reporting and Notifications (CRA 10.1 Reporting, Notifications and Approvals)*: VASPs are required to regularly report to the CBB and notify them of significant changes. This includes providing periodic reports on their financial status, operational activities, and compliance with regulatory requirements, and notifying the CBB of any significant changes in management, business operations, or control structures.
5. *Conduct of Business (CRA 12.1 Conduct of Business Obligations)*: VASPs must conduct their business in a fair and transparent manner. They must ensure that their operations do not harm the stability and integrity of the financial system, avoid conflicts of interest and operate ethically, and provide clear and accurate information to their clients about their services and associated risks.
6. *Prevention of Market Abuse (CRA 13.1 Prevention of Market Abuse and Manipulation)*: VASPs must take steps to prevent market abuse and manipulation. They should implement measures to detect and prevent activities that could distort the market or harm its stability and ensure transparent and fair-trading practices.
7. *Compliance with AML/CFT Regulations (CRA 4.4 Dealing with Clients and AML/CFT Requirements)*: VASPs must comply with Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) regulations. This involves implementing AML/CTF policies and procedures, conducting due diligence on clients to prevent money laundering and terrorist financing, and reporting suspicious activities to the relevant authorities.
8. *Custody Requirements (CRA 8.1 Custody Requirements)*: VASPs that hold customer funds or cryptocurrencies are subject to additional regulatory requirements pertaining to custody and safeguarding these assets.
9. *Internal Controls and Record Keeping (CRA 4.2 Auditors and Accounting Standards)*: VASPs must put in place internal controls and processes to ensure the integrity of their business operations and maintain accurate and complete records of their transactions.
10. *Supervision and Monitoring (CRA 11.1 Information Gathering by the CBB)*: VASPs are subject to ongoing supervision and monitoring by the CBB. This includes periodic onsite inspections and audits to ensure compliance with regulations and requirements.

What are the main restrictions on VASPs in Bahrain?

Bahrain imposes several key restrictions on VASPs which are primarily outlined in the CRA under its Capital Markets Rulebook and AML/CFT Regulations. Here are the main restrictions, with instances and examples:

1. *Restrictions on certain activities (CRA 2 General Requirements)*: The CBB may restrict or prohibit VASPs from engaging in certain activities that pose unacceptable risks to the financial system, such as high-risk trading practices or certain investment schemes. For example, a VASP may be prohibited from engaging in margin trading or offering certain high-risk financial products without specific approval from the CBB.

2. *Compliance with AML/CFT regulations (CRA 4.4 Dealing with Clients and AML/CFT Requirements)*: VASPs must strictly comply with AML/CFT regulations. This includes customer due diligence, suspicious transaction reporting, and sanctions screening. For instance, a VASP must verify the identity of its clients and monitor transactions for suspicious activities, reporting any such activities to the relevant authorities.
3. *Restrictions on advertising and marketing (CRA 12.2 Conduct of Business Obligations)*: The CBB may impose restrictions on how VASPs advertise and market their services to protect consumers from misleading information and ensure transparency. For example, a VASP may be required to include disclaimers about the risks of investing in virtual assets in their advertisements.
4. *Restrictions on outsourcing (CRA 5 Technology Governance and Cyber Security)*: VASPs must obtain prior approval from the CBB before outsourcing any critical functions to ensure that these functions are managed securely and effectively. For instance, if a VASP wants to outsource its customer service operations to a third-party provider, it must first get approval from the CBB.
5. *Restrictions on ownership changes (CRA 10 Reporting, Notifications and Approvals)*: VASPs must obtain prior approval from the CBB for any changes in ownership or control to maintain oversight of the entity's governance and financial health. For example, if a major shareholder in a VASP decides to sell their stake to another investor, this transaction must be approved by the CBB.
6. *Restrictions on branches and subsidiaries (CRA 10 Reporting, Notifications and Approvals)*: VASPs must obtain prior approval from the CBB before establishing branches or subsidiaries, whether in Bahrain or abroad. This ensures that the CBB can monitor and regulate the expanded operations. For example, if a VASP wants to open a branch in another country, it must first seek approval from the CBB.
7. *Restrictions on dealing with high-risk countries (CRA 4.4 AML/CFT Compliance)*: VASPs are restricted from dealing with individuals or entities from high-risk countries subject to sanctions or with inadequate AML/CFT controls. This mitigates the risk of money laundering and terrorist financing. For instance, a VASP cannot engage in transactions with entities from countries listed on the FATF high-risk and non-cooperative jurisdictions list.
8. *Restrictions on dealing with unlicensed entities (CRA-4.3 Dealing with Clients)*: VASPs are prohibited from dealing with unlicensed virtual asset service providers to ensure that all parties involved in the transaction are properly regulated and compliant with the law. For example, a licensed VASP in Bahrain cannot execute trades or collaborate with an unlicensed foreign crypto exchange.

What are the main information that VASPs have to make available to its customers?

In Bahrain, VASPs must provide several key pieces of information to their customers to ensure transparency and protect consumers. VASPs are required to clearly display their licensing status and regulatory approvals from the CBB to verify their legitimacy. They must

provide comprehensive risk disclosures about the potential risks of virtual assets, such as price volatility and cybersecurity threats. Customers should be informed about the fee structure, including transaction and withdrawal fees, to avoid hidden charges. Clear terms and conditions must outline the rights and obligations of both parties. Privacy and data protection policies should explain how customer data is collected, used, and safeguarded. Information on AML/CFT policies, including customer due diligence and transaction monitoring, must be available. VASPs should also provide details on how to file complaints and the process for resolving them, ensuring issues are addressed promptly. Additionally, information on service availability and any potential downtime should be communicated to manage customer expectations effectively.

What market misconduct legislation/regulations apply to virtual assets?

Market misconduct legislation and regulations in Bahrain are primarily described in the CRA under its Capital Markets Rulebook and related laws. Here are the key provisions:

1. *Prohibition of market manipulation*: The CRA prohibits market manipulation, including creating false signals about the supply, demand, or price of virtual assets. For example, a VASP cannot artificially inflate the price of a cryptocurrency by placing large orders they do not intend to execute.
2. *Prohibition of fraudulent trade practices*: The CRA Rules also prohibit fraudulent trade practices, such as making false statements or misrepresentations of material facts. For instance, a VASP must not provide misleading information about the potential returns on a virtual asset investment.
3. *Prohibition of trading virtual assets issued by VASPs or their Related Parties*: VASPs are prohibited from trading or engaging in transactions involving virtual assets issued by themselves or their related parties, except in specific circumstances approved by the CBB. This rule is in place to prevent conflicts of interest and ensure market fairness.
4. *Prohibition of discretionary blocking of deposits or withdrawals*: The CRA prohibit VASPs from arbitrarily blocking users' deposits or withdrawals. Any blocking must be justified, and users must be notified in advance.
5. *Monitoring of abnormal transactions*: VASPs are required to continuously monitor transactions for abnormal activity and respond appropriately to protect users and maintain transaction integrity. This includes detecting and investigating unusual patterns that might indicate fraudulent or manipulative behavior.
6. *Sanctions for Unfair Trade Practices*: Violations of the CRA Rules related to unfair trade practices can result in severe penalties, including imprisonment for a minimum of one year or fines up to three to five times the profit gained from the misconduct.

Additional Regulatory Sources

1. *Law on Combating Cybercrime (2014): Bahrain's Law No. 60 of 2014* on Combating Cybercrimes addresses various cyber offenses related to virtual assets, including illegal

access to information systems and data interference. Penalties can include imprisonment of up to 10 years and fines up to BHD 200,000.

2. *AML/CFT Regulations*: VASPs must comply with AML/CFT regulations, which include customer due diligence, suspicious transaction reporting, and sanctions screening. This ensures that virtual asset activities are not used for money laundering or terrorist financing.

4. Regulation of other crypto-related activities in Bahrain

Are managers of crypto funds regulated in Bahrain?

Yes, managers of crypto funds are regulated in Bahrain under the comprehensive regulatory framework established by the CBB. The CBB's CRA, part of Volume 6 of the CBB Rulebook, provides the guidelines for the licensing and operation of entities involved in various aspects of crypto-assets, including portfolio management.

1. *Licensing Requirements*: The licensing process for crypto fund managers involves several key requirements:
2. *Business plan*: Applicants must submit a detailed business plan specifying the type of crypto-asset services they intend to offer.
3. *Shareholder and controlled function applications*: Application forms must be submitted for all shareholders and individuals occupying controlled functions within the organisation.
4. *Minimum Capital Requirements*: The CBB mandates minimum capital requirements for different categories of licensees. For portfolio management services, entities must meet the capital adequacy standards set by the CBB.

Regulatory and Ongoing Requirements: Licensed crypto fund managers must adhere to strong governance frameworks and internal controls while implementing AML/CFT measures, including enhanced due diligence on clients. They must also establish effective risk management procedures and security measures to protect crypto-assets. Additionally, managers are responsible for educating clients and providing clear instructions on using crypto-asset services. Ongoing obligations include regular reporting to the CBB on operations and compliance, undergoing periodic audits, and ensuring the protection and segregation of client assets.

Are distributors of virtual asset funds regulated in Bahrain?

Yes, distributors of virtual asset funds are regulated in Bahrain. The CBB has established a comprehensive regulatory framework to govern various activities involving crypto-assets, including the distribution of such assets. This framework is encapsulated in the CRA of Volume 6 of the CBB Rulebook.

Licensing Requirements: Entities wishing to engage in the distribution or any form of dealing, advising, or portfolio management involving virtual assets must obtain the

appropriate license from the CBB. The licensing categories cover a range of activities and include:

1. *Reception and transmission of orders*: Receiving orders to buy or sell crypto-assets from clients and transmitting those orders to a third party for execution.
2. *Trading as agent*: Acting to conclude agreements to buy or sell crypto-assets on behalf of clients.
3. *Trading as principal*: Trading against proprietary capital.
4. *Portfolio management*: Managing crypto-assets on behalf of clients.
5. *Crypto-asset custodian*: Safeguarding, storing, and holding crypto-assets for clients.
6. *Investment advice*: Providing personalised recommendations to clients regarding crypto-assets.
7. *Operating a crypto-asset exchange*: Facilitating the trading, conversion, or exchange of crypto-assets.

Applicants for a license must submit a detailed business plan, application forms for shareholders and controlled functions, and meet minimum capital requirements which vary depending on the category of the license. For example, Category 1 licensees have a minimum capital requirement of BHD 25,000, while Category 4 licensees require BHD 300,000.

Regulatory and ongoing requirements: Licensed entities must establish strong governance frameworks and internal controls while implementing AML/CFT measures, including enhanced due diligence on clients. They must maintain adequate risk management procedures and security measures to protect crypto-assets, and provide clients with clear instructions and educational materials. Additionally, they are required to regularly report to the CBB on their operations, undergo periodic audits, and ensure the protection and segregation of client assets.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Bahrain?

Yes, there are specific requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Bahrain. Here are the key points:

1. *Licensing requirements*: Intermediaries must obtain a license from the CBB to provide crypto-asset services. This includes trading in virtual assets for clients or advising clients on virtual assets. The licensing categories cover activities such as reception and transmission of orders, trading as an agent or principal, portfolio management, and providing investment advice.
2. *Minimum capital requirements*: The minimum capital requirements vary depending on the licensing category, ranging from BHD 25,000 to BHD 300,000. This ensures that intermediaries have sufficient financial stability to support their operations.

3. *Risk management*: Intermediaries must have effective risk management policies and procedures in place to identify, assess, monitor, and manage risks associated with their crypto-asset services.
4. *Information security*: Companies must have adequate measures in place to protect their systems and customers' information from unauthorised access and data breaches. This includes adhering to cybersecurity risk requirements to prevent and mitigate potential cyber threats.
5. *Professional indemnity coverage*: Intermediaries must maintain professional indemnity coverage to ensure they are protected against potential losses or damages arising from their services.
6. *Reporting and notification obligations*: Intermediaries must report and notify the CBB of various activities, including transactions, client information, and any changes to their operations.
7. *Client registration*: Intermediaries can only undertake transactions with clients who are registered and meet specific eligibility criteria, such as being a legal entity or a natural person above the age of 21. This ensures that clients are adequately vetted and eligible for crypto-asset services.
8. *Agreement requirements*: Intermediaries must enter into an agreement with their clients that outlines specific terms and conditions, including the scope of services, fees, and risk management procedures. This helps in setting clear expectations and protecting the interests of both parties.
9. *CBB approval*: Intermediaries must obtain the CBB's approval for individuals in "controlled functions," such as branch managers or those responsible for managing the company's operations in Bahrain.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in Bahrain?

There are no specific upcoming regulatory developments in respect of crypto-related activity in Bahrain that are publicly announced. However, the CBB plans to implement regulations for digital token offerings, ensuring that all digital tokens exhibiting the characteristics of securities are regulated to enhance investor protection. New requirements will improve the safeguarding of client assets, and expanded services for licensees will be permitted.

Additionally, the CBB will support the inclusion of foreign entities by allowing overseas companies to apply for licenses as 'Overseas crypto-asset service licensees.' The emphasis on cybersecurity and risk management will be strengthened, introducing higher standards to mitigate potential threats.

Has there been any notable events in Bahrain that has prompted regulatory change recently?

Recently, Bahrain made changes to its crypto regulations to keep up with the fast-moving crypto market and new risks. A key event was in March 2023 when the CBB updated its Crypto-Asset Module. These updates came after talking with industry experts and aimed to better protect investors, include rules for digital token offerings, and ensure the safety of clients' assets. The CBB also allowed licensed crypto businesses to offer more services with approval. These changes show Bahrain's dedication to creating a safe and innovative space for crypto activities, staying in line with global standards.

6. Pending litigation and judgments related to virtual assets in Bahrain (if any)

There are no specific pending litigation and judgments related to virtual assets in Bahrain that are publicly announced.

7. Government outlook on virtual assets and crypto-related activities in Bahrain

Bahrain appears to have a positive outlook on virtual assets and crypto-related activities. The CBB has implemented a legislative framework to oversee and manage crypto assets, with regulations based on international best practices, particularly regarding money laundering. These regulations cover licensing requirements, safeguarding rules, technology standards, and reporting, notification, and approval requirements. Additionally, in March 2022, Binance, one of the largest crypto exchange platforms, was granted a license by the CBB, which was the first of its kind in the Gulf Cooperation Council. This is a clear indication of Bahrain's progressive regulatory policies and its openness to cryptocurrency and digital assets.

In Bahrain, there are currently no specific tax provisions targeting income earned from crypto assets. This means that, as of now, income generated through activities such as trading, investing, or holding cryptocurrencies is not subject to income tax or capital gains tax. Bahrain does not impose personal income taxes on its residents, which extends to earnings from virtual assets.

Compliance with FATF Standards: Bahrain, a member of the Middle East and North Africa Financial Action Task Force (MENAFATF), aligns its AML and CFT measures with the recommendations of the FATF. Through the CRA in its Capital Markets Rulebook, Bahrain has integrated FATF's standards on AML/CFT. This includes stringent requirements for customer due diligence, suspicious transaction reporting, and the FATF's Travel Rule, which mandates VASPs to share relevant information for virtual asset transactions.

Besides FATF, Bahrain aligns its regulations with several international frameworks:

1. *Basel Committee on Banking Supervision*: Bahrain adheres to the Basel Committee's guidelines on banking supervision, which include aspects of virtual asset regulation to ensure financial stability and integrity.
2. *International Organisation of Securities Commissions (**IOSCO**)*: Bahrain follows IOSCO's principles for regulating securities markets, extending these principles to virtual assets to ensure market transparency and investor protection.

Red Flag Indicators: The CBB has issued guidance on identifying red flag indicators related to suspicious activities in the crypto-assets market.

Red Flag Indicators for virtual asset in Bahrain include structuring transactions in small amounts to avoid detection, making multiple high-value transactions in quick succession, transferring VAs to multiple VASPs in different jurisdictions without a clear connection to the customer's location, and quickly withdrawing deposited VAs without additional exchange activity. Other red flags involve large initial deposits by new users inconsistent with their profiles, frequent transfers to the same account, and economically irrational transactions like exchanging VAs at a loss. Indicators related to anonymity include using anonymity-enhanced cryptocurrencies, operating unregistered VASPs on peer-to-peer websites, and employing mixing or tumbling services to obscure fund origins. Red flags also arise from irregularities during account creation, such as multiple accounts from the same IP address, incomplete KYC information, and profile discrepancies. Source of funds red flags include links to known fraud or illicit activities, transactions from online gambling services, and funds from high-risk jurisdictions with weak AML/CFT regulations. To address these indicators, VASPs should apply enhanced due diligence, use advanced transaction monitoring systems, conduct regular audits, educate customers on compliance, and report suspicious activities promptly.

In recent years, Bahrain has faced a mix of stability and challenges. While political stability has mostly been maintained, occasional unrest and demands for democratic reforms have influenced regulatory policies. Balancing security with reform efforts has affected Bahrain's international reputation and internal policies. Economic pressures from changing oil prices have led Bahrain to diversify its economy, focusing on finance, technology, and tourism.

8. Advantages of setting up a VASP in Bahrain

Setting up a VASP in Bahrain comes with several benefits. Firstly, Bahrain offers a comprehensive regulatory framework for VASPs, established by the CBB. This framework provides precise licensing requirements, ensuring that VASP operations are legitimate and transparent.

Moreover, Bahrain's regulations include AML/CTF measures. This not only mitigates legal risks but also ensures that VASP operators have strong compliance controls, providing confidence in meeting regulatory obligations and avoiding enforcement actions.

Another significant advantage is Bahrain's fintech regulatory sandbox. This initiative allows crypto-related entities to test their products and solutions in a controlled environment

before obtaining a full license. This is particularly beneficial for startups and businesses developing new virtual asset-based products, as it supports innovation and growth.

Additionally, Bahrain has specific corporate structuring requirements, including the need for resident directors and a local office. This ensures that VASPs have a tangible presence in the country, enhancing their credibility and operational effectiveness.

The licensing fees in Bahrain are variable, but the framework ensures that all necessary AML/CTF measures and regular audits are in place. Bahrain does not impose income or capital gains tax, making it a financially attractive destination for VASPs. Penalties for non-compliance are severe, which shows the importance of adhering to regulations.

Bahrain's regulatory framework is aligned with international best practices, including those of the FATF, ensuring that VASPs operate within globally recognised standards. The country also has strong cybersecurity measures, supporting the safe and secure operation of virtual asset services.

Additionally, operating within Bahrain gives VASPs access to a fast-growing market for virtual currencies and digital assets. This opens up numerous investment opportunities and allows businesses to expand their reach within the region.

June 2024

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Dubai International Financial Centre (DIFC)

1. Virtual asset laws and regulations in the Dubai International Financial Centre (DIFC)

The Dubai International Financial Centre (**DIFC**) serves as a significant financial hub in the UAE, providing a range of financial services. Established in 2004, the DIFC operates as an autonomous jurisdiction with its legal and regulatory framework based on English common law. It is home to over 2,500 registered companies, including banks and insurance firms.

As of March 2024, the DIFC has significantly updated its regulatory framework for virtual assets with the enactment of the Digital Assets Law No. 2 of 2024. This law establishes a comprehensive legal framework for digital assets. The regulatory framework for virtual assets in the DIFC also adheres to international best practices and standards, aligning with recommendations from the Financial Action Task Force (**FATF**). The Dubai Financial Services Authority (**DFSA**) plays a crucial role in shaping this framework. This regulatory initiative offers guidelines, covering licensing and registration requirements, along with measures for investor protection and risk management.

What is considered a virtual asset in the Dubai International Financial Centre (DIFC)?

Initially, virtual assets in the DIFC were classified as "Crypto Tokens" and were regulated based on their characteristics. DIFC Law No. 4 of 2012 defined crypto tokens as "Securities" if they exhibit traits similar to traditional securities. However, individual consideration was emphasised to avoid a blanket classification.

However, under the newly enacted Digital Assets Law (DIFC Law No. 2 of 2024), the term "virtual asset" in the DIFC is defined as a "Digital Asset." A Digital Asset is characterised as a notional quantity unit that is created through the active operation of software by a network of participants and is represented by network-instantiated data. It exists independently of any particular person or legal system and is not capable of duplication. This means that the

use or consumption of the asset by one person necessarily prevents others from using or consuming it in the same way. Digital Assets are classified as intangible property and are distinct from traditional forms of property, as they are neither physical objects nor rights that must be claimed through legal action. This expansive definition allows the DIFC to properly regulate technological advances and accommodate a growing range of digital assets like cryptocurrencies and non-fungible tokens.

What are the relevant laws and regulations?

1. DIFC Law No. 1 of 2004: It is a law enacted by the Ruler of Dubai for the jurisdiction of the Dubai International Financial Centre. The law has several parts, including general provisions, the structure of the DFSA and its powers, rules, financial market tribunal, proceedings, and enforcement. The Law has provisions for resolvability, which refers to the ability of an authorised firm to be resolved by an orderly resolution. The DFSA has the authority to write down or convert any instrument or liability and to appoint a temporary administrator in the event of resolution. In the context of virtual assets, the Regulatory Law 2004 enables the DFSA to regulate these assets and to ensure they comply with the law's provisions.
2. Federal Law No. 8 of 2004: This law serves as the foundation for establishing a Financial Free Zone in any Emirate through a Federal Decree. It plays a pivotal role in granting exemptions to Financial Free Zones and Financial Activities from all Federal civil and commercial laws. While emphasising the application of Federal criminal laws, including Anti-Money Laundering regulations, within the Financial Free Zones, the law also imposes specific restrictions. Notably, it prohibits DIFC authorised firms from engaging in deposit-taking within the State's markets and using the UAE Dirham.
3. Federal Decree No. 35 of 2004: This decree marks the establishment of the DIFC as a Financial Free Zone in Dubai, known as the DIFC Law. Accompanied by Cabinet Resolutions, the decree defines the geographic boundaries of the DIFC and permits centre bodies and authorised firms to operate outside the DIFC during its initial construction phase. It forms a crucial part of the legal framework shaping the structure and operations of the DIFC.
4. Dubai Law No. 5 of 2021: Recognising the establishment of the DIFC, Dubai Law No. 5 of 2021 reinforces the financial and administrative independence of the DIFC. It lays the groundwork for DIFC centre bodies, including the DIFC Authority, DFSA, and DRA.
5. Cabinet Resolution No. 28 of 2007: Implementing Federal Law No. 8 of 2004 on Financial Free Zones, Cabinet Resolution No. 28 of 2007 offers detailed provisions concerning the Financial Free Zones Law. It serves as a complementary piece, providing clarity and specific guidelines related to the application and enforcement of the aforementioned federal law. The resolution contributes to the comprehensive regulatory framework governing Financial Free Zones.
6. Consultation Paper No. 143: Issued by DFSA DIFC's invites public input on potential regulations for entities involved in financial services related to Crypto Tokens. The

paper focuses solely on Crypto Tokens and proposes changes to existing laws, including the Regulatory Law, Markets Law, and other relevant modules.

Notable proposals in the paper include the prohibition of Privacy Tokens and Devices, as well as Algorithmic Tokens. It describes requirements in areas like acceptable Crypto Tokens, establishing a Crypto Asset Fund, managing crypto assets in funds, market supervision, and procedures for addressing complaints and seeking redress.

7. DIFC Law No. 1 of 2012 (Markets Law): Oversees securities and crypto tokens. It specifically addresses the application of the law to crypto tokens. The law applies to the offering of securities or crypto tokens and mandates issuers to provide comprehensive information in a prospectus for informed assessments by investors.

    7.1 The law prohibits any misleading statements or omissions related to investments or crypto tokens, regardless of the location. It also regulates the issuance and offering of securities by investment companies.

    7.2 It focuses on preventing market abuse and prohibiting fraud and market manipulation by prohibiting individuals from engaging in activities that create a false impression about the supply, demand, or price of investments or crypto tokens. It also bans the use of non-public information that could impact transaction terms for investments or crypto tokens.

8. The DFSA Rulebook's General Module (GEN): It is a regulatory guide for authorised financial entities in the Dubai International Financial Centre, offering detailed definitions and rules. It directly applies to specific virtual currency services like investment dealing, custody, and trading facilities. It explains criteria for financial promotions related to virtual currencies, emphasising accurate representation. The Rulebook also prohibits privacy coins and algorithmic tokens in the DIFC due to transparency, market manipulation, and investor protection concerns.

9. Glossary Module (**GLO**): The GLO module defines a crypto token as a secure digital representation of value, rights, or obligations, traded electronically through technologies like distributed ledgers. A crypto business covers various financial services related to these tokens, such as buying and selling, managing assets, and operating trading platforms.

    9.1 The Rulebook provides clear guidance on running crowdfunding platforms for investments, loans, and property. It explains the rules to follow and the requirements for obtaining a license.

    9.2 Security tokens, as per the Rulebook, are like specific securities or instruments, with similar rights and obligations. It mentions that these tokens might have restrictions affecting how often or how much they can be traded.

10. The Digital Assets Law (DIFC Law No. 2 of 2024): The Digital Assets Law enacted by the DIFC on March 8, 2024, establishes a comprehensive framework for the regulation of digital assets. This law clearly defines what constitutes a digital asset, describing it as a virtual unit created by software and network data that cannot be copied and exists independently of any person or legal system. The law aims to eliminate uncertainties

surrounding the legal status of digital assets, providing clarity on how they can be controlled, transferred, and managed.

In addition to defining digital assets, the law amends existing DIFC legislation, including the Contracts Law and the Law of Obligations, to incorporate specific provisions related to digital assets. This ensures that these assets are recognised within the legal system, allowing them to be treated similarly to traditional forms of property.

Who do such laws and regulations apply to?

Under the new Digital Assets Law (DIFC Law No. 2 of 2024), the regulations apply to all entities and individuals engaging in activities involving Digital Assets within or originating from the DIFC. This includes businesses offering financial services related to Digital Assets, such as exchanges, asset managers, brokers, and custodians. These entities are required to obtain the appropriate authorisation or license from the DFSA to operate legally within the jurisdiction.

The law extends to Authorised Persons, individuals or entities seeking authorisation, issuers or developers of digital assets, and any other entity involved in activities associated with digital assets.

Who are the relevant regulatory authorities in relation to virtual assets in the Dubai International Financial Centre (DIFC)?

The Dubai Financial Services Authority (**DFSA**) is the primary regulatory body overseeing the virtual assets space in the DIFC. The DFSA's framework includes:

1. Licensing requirements for firms wishing to provide services related to digital assets, which include trading, custody, and advisory services.
2. Regulations addressing various risks such as anti-money laundering, consumer protection, and financial crime.

What are the penalties for breaches of virtual asset laws and regulations in the Dubai International Financial Centre (DIFC)?

Under the Digital Assets Law and the Crypto Token Regime implemented by the DFSA in the DIFC, various penalties are established for non-compliance including fines, sanctions, and potential license revocation:

1. Under Digital Assets Law enacted on March 8, 2024, the financial penalties can be imposed based on the severity of the violation, starting from AED 20,000 and potentially escalating to AED 500,000 for repeat offenses. In addition to monetary fines, the DIFC has the authority to suspend or revoke licenses of individuals or entities that fail to comply with the regulations governing virtual assets. This includes both the suspension of specific permits related to virtual asset activities and, in coordination with relevant authorities, the potential cancellation of commercial licenses.

   The DIFC regulatory body is also vested with judicial powers, allowing it to conduct investigations and enforce compliance effectively. This authority enables the

regulatory body to access records and documents pertinent to virtual asset operations to ensure adherence to the legal framework. Moreover, in cases of serious misconduct, public censure may be imposed as an additional deterrent, serving to discourage future violations and uphold the integrity of the financial system within the DIFC.

2. Sanctions may also be applied, depending on the nature and gravity of the infringement. These can encompass restrictions on the types of financial services a firm can provide, termination of client business relationships, and potential damage to the firm's reputation.
3. License revocation is a severe consequence for persistent violations of the Crypto Token Regime. This penalty may result in the termination of business operations within the Dubai International Financial Centre, restricting the entity's ability to conduct financial services activities in the future and adversely impacting its reputation.
4. Penalties encompass both monetary fines and potential revocation of licenses, with the DFSA having the authority to initiate criminal investigations and impose sanctions for non-compliance. These measures are designed to ensure that individuals and firms operating in the crypto-assets sector adhere to transparent and trustworthy practices.
5. Also, the DFSA does not recognise crypto-tokens prohibited in the DIFC. Engaging in activities related to these tokens, such as trading and custody, may lead to consequences such as fines, imprisonment, and limitations on business activities.
6. Furthermore, DIFC Law No. 1 of 2012 (Markets Law) discusses civil compensation that a person may need to pay for contravening the law's provisions, including those related to the offer of securities or crypto tokens. The law grants the DFSA the authority to issue a stop order if it deems that an offer of securities or crypto tokens breaches the law or its associated rules.
7. Another part of The Markets law, focusing on proceedings, allows the court, at the DFSA's request, to issue orders concerning a person, irrespective of whether a violation has occurred. Such measures can be taken if it is deemed in the interest of the DIFC.
8. Compliance with Anti-Money Laundering/Combating the Financing of Terrorism (**AML/CFT**) obligations are integral in the crypto-asset industry in the DIFC. Authorised firms and individuals involved in crypto-asset activities must adhere to DFSA-issued guidelines for AML/CFT compliance. Non-compliance with these guidelines may result in penalties and restrictions on business activities.

2. Regulation of virtual assets and offerings of virtual assets in the Dubai International Financial Centre (DIFC)

Are virtual assets classified as 'investments' or other regulated financial instruments in the Dubai International Financial Centre (DIFC)?

Under the new Digital Assets Law (DIFC Law No. 2 of 2024), Digital Assets in the DIFC are classified and regulated based on their unique characteristics. The law defines a Digital Asset as a notional quantity unit that exists independently of any person or legal system and

is not capable of duplication. This framework distinguishes between different types of Digital Assets, such as securities, utility tokens, and non-fungible tokens, each of which may fall under distinct regulatory regimes depending on their attributes and intended use.

Digital Assets that exhibit traits similar to traditional financial instruments, such as representing ownership rights or providing a return on investment, may be classified as securities. This classification aligns with the broader principles of securities regulation, ensuring that Digital Assets with investment-like characteristics are subject to stringent regulatory oversight. The DIFC does not apply a blanket classification to all Digital Assets; instead, it assesses each asset based on its specific features and use cases to determine the appropriate regulatory treatment.

The DFSA oversees the recognition and regulation of various Digital Assets, including widely recognised cryptocurrencies such as Bitcoin, Ethereum, Litecoin, and XRP. However, the DFSA imposes restrictions on certain types of Digital Assets, such as privacy tokens and algorithmic tokens, due to concerns over transparency and investor protection. Central bank digital currencies (**CBDCs**) are also excluded from the definition of Digital Assets under the DIFC's regulatory framework, as they are governed by separate legal provisions.

Are stablecoins and NFTs regulated in the Dubai International Financial Centre (DIFC)?

In the DIFC, both stablecoins and non-fungible tokens (NFTs) are subject to regulation under the newly enacted Digital Assets Law and the Crypto Token regime established by the DFSA.

Regulation of Stablecoins

Stablecoins, defined as fiat-backed crypto tokens, are recognised under the DFSA's regulatory framework. The DFSA has established specific recognition criteria for stablecoins, allowing them to be classified and regulated as part of the broader category of crypto tokens. This includes compliance with financial crime regulations and transaction monitoring to ensure transparency and investor protection.

Regulation of NFTs

NFTs are also encompassed within the regulatory framework of the DIFC. The Digital Assets Law provides a comprehensive approach to digital assets, including NFTs, which are treated as unique digital representations of ownership or rights. The law addresses how these assets can be controlled, transferred, and dealt with legally. Additionally, NFTs may fall under different regulatory regimes depending on their characteristics and intended use, such as whether they represent an investment or a utility.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in the Dubai International Financial Centre (DIFC)?

Decentralised finance (**DeFi**) activities, including lending virtual assets, are regulated in the DIFC under the Digital Assets Law (DIFC Law No. 2 of 2024) and the Crypto Token regime established by the DFSA.

DeFi activities fall under the general regulatory framework outlined in the DIFC Regulatory Law, specifically within the DFSA Rulebook's general (**GEN**) module. This framework mandates that individuals and entities must comply with regulatory provisions when engaging in DeFi activities related to crypto tokens. Individuals are prohibited from engaging in any DeFi activity involving crypto tokens unless those tokens are recognised by the DFSA. The DFSA considers various factors for recognition, including the nature of the hosting platform and the level of investor protection provided.

Activities related to algorithmic tokens are explicitly prohibited due to concerns regarding transparency and investor protection. Also, anyone operating a crypto business in or from within the DIFC, including those involved in DeFi activities such as lending virtual assets, is required to obtain a license from the DFSA. This ensures compliance with regulatory standards and protects consumers. Moreover, DeFi projects may be registered under an Innovation License, but if they involve regulated activities like peer-to-peer lending, additional authorisations from the DFSA will be necessary.

Are there any restrictions on issuing or publicly offering virtual assets in the Dubai International Financial Centre (DIFC)?

The restrictions and requirements on the issuance or publicly offering of virtual assets in DIFC are described in the Digital Assets Law (DIFC Law No. 2 of 2024) and DIFC GEN of the DFSA Rulebook. The Rulebook specifies requirements that apply to financial services and other activities relating to crypto tokens.

It prescribes that a person must not engage in any of the following activities in or from the DIFC in relation to a crypto token unless it is a recognised crypto token:

1. carry on a financial service relating to the crypto token;
2. operate a crypto exchange;
3. operate a crypto custodian;
4. offer to the public a crypto token.

Also, an issuer seeking recognition for a crypto token must submit an application for recognition to the DFSA. The application must include a comprehensive proposal clearly identifying how the crypto token complies with the criteria for recognition which requires that the issuer seeking recognition must disclose relevant and accurate information to the DFSA, including the white paper describing the crypto token, any technical specifications, any legal opinions, any contracts and agreements relating to the crypto token, and any other information relevant to the determination that the crypto token meets the recognition criteria.

It should be noted that the Recognition of a crypto token under the Rulebook does not relieve an authorised person or any other person from their responsibility to carry out proper due diligence on a crypto asset before providing a Financial Service or carrying out any other activity relating to the crypto token.

Additionally, it set out stricter requirements and restrictions on Issuing or Publicly Offering of Virtual Assets in DIFC in Digital Assets law,2024. Under the Act, an issuer or promoter who

wishes to issue or publicly offer any virtual asset within or from the DIFC would require to fulfil certain requirements as set out below:

1. The issuer must be incorporated as a limited liability company under DIFC companies' law.
2. The virtual asset's publicly offering must comply with the Chapter 2.0 of the Rules in the Offered Securities and Debentures Module (**OSD**).
3. The issuer must provide detailed information about the virtual asset, its technology, its characteristics, and the risks associated with it in the offer document.
4. The issuer must provide a clear description of the product, its features, and how it can be used.
5. The issuer must provide a clear explanation of the rights and obligations of the investor.
6. The issuer must ensure that the virtual asset is suitable for the type of investor it is being offered to, and that the investor has the necessary knowledge and experience to understand the product's risks and characteristics.
7. The issuer must disclose the risks associated with the product and any conflicts of interest that may exist.
8. The issuer must establish proper governance and control procedures to ensure the protection of investor's rights and interests.
9. The issuer must provide proper record keeping to enable the DFSA to supervise the issuer's operations.
10. The issuer must establish procedures and controls for the safekeeping of any virtual assets, including holding such assets in an appropriate custodian, and ensuring that they are properly accounted for.
11. The issuer must ensure that it is compliant with all relevant laws and regulations, including anti-money laundering and counter-terrorist financing regulations.
12. The issuer must submit regular reports to the DFSA on the virtual asset's performance and any changes to its features.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in the Dubai International Financial Centre (DIFC)?

There are exemptions to the restrictions on issuing or publicly offering virtual assets in DIFC. Specifically, the Digital Assets Law (DIFC Law No. 2 of 2024) and DIFC Rulebook's DIFC GEN provides exemptions. The rulebook provides exemptions for virtual assets that are considered Security Tokens. This exemption is granted if the following conditions are met:

1. The virtual asset must be issued by an Authorised Firm or an entity operating under a financial services regulatory framework that is equivalent to that of the DFSA;

2. the virtual asset must be offered to (a) Professional Clients (as defined in the DFSA Conduct of Business Module), (b) clients who are knowledgeable in investing in virtual assets, or (c) clients who can invest a minimum of USD 100,000 in the virtual asset;
3. the virtual asset is listed on an exchange recognised by the DFSA, or is traded via a Multilateral Trading Facility or Organised Trading Facility; and
4. the virtual asset is registered with the DFSA.

Additionally, DIFC GEN provides an exemption for virtual assets that are utility tokens. This exemption is granted if the following conditions are met:

1. The virtual asset must be used to access or purchase goods or services, or to otherwise provide a benefit to its holders;
2. the virtual asset must be available for use at the time of issuance;
3. the proceeds from the sale of the virtual asset must be used to develop the network or platform that facilitates its utility, and
4. The issuer of the virtual asset must disclose clearly that the virtual asset is a utility token and not a security token.

It is important to note that the DFSA may require additional conditions to be met in order to grant an exemption for virtual assets. the DFSA may impose further conditions or restrictions regarding virtual assets, including minimum disclosure requirements, sale limitations, and liquidity requirements.

Furthermore, there are exemptions in relation to the restrictions on offering or issuing Virtual Assets are provided in the Digital Assets Law (DIFC Law No. 2 of 2024), which states that DIFC will allow certain exempted activities which include the following:

1. Persons who provide auto-conversion service for Virtual Assets which eliminates the involvement of any fiat currency.
2. Mining pools that operate in DIFC are exempted from seeking regulatory protection for their activities.
3. Persons that provide services related to Smart Contracts or related to Operating Systems/Protocol Layers do not have to obtain regulatory approval for their functioning.
4. Persons who are involved in providing services for load balancing, security, or other similar purposes that are not conducted to provide decentralised exchange functions do not need to obtain regulatory permission.
5. Service providers that are involved in ancillary services such as systems management, data hosting, and server administration do not require regulatory permission.

It is important to note that VASPs operating in these exempted activities are still subject to AML/CFT regulations and must comply with the AML module.

3. Regulation of VASPs in the Dubai International Financial Centre (DIFC)

Are VASPs operating in the Dubai International Financial Centre (DIFC) subject to regulation?

Virtual asset providers operating in or from DIFC are regulated by the Dubai Financial Services Authority DFSA. The specific manner in which they are regulated depends on several factors including the type of VASP activity being conducted, the level of risk associated with that activity, and the nature of the business. The regulation of VASPs is detailed in the Digital Assets Law and the DIFC Rulebook's DIFC GEN.

The DFSA has set out the regulatory requirements for VASPs to help mitigate the risks associated with virtual assets and ensure compliance with AML/CTF obligations. These requirements include:

1. The requirement to obtain DFSA authorisation or registration to operate a virtual assets business in DIFC, unless an exemption applies.
2. Individuals are prohibited from engaging in activities related to crypto tokens unless the token is recognised by the DFSA. This includes carrying on financial services related to the token, operating a crypto exchange or custodian, or offering a crypto token to the public.
3. An issuer seeking recognition for a crypto token must submit a comprehensive application to the DFSA demonstrating compliance with recognition criteria and providing relevant documents like a white paper and legal opinions.
4. The requirement to comply with AML/CTF obligations under the DIFC AML/CTF module, which includes conducting due diligence on customers, ongoing monitoring of transactions, and reporting suspicious activities to the Financial Intelligence Unit,
5. The requirement to ensure the safety, security, and custody of client assets by implementing appropriate safeguards and risk management systems,
6. The requirement to have appropriate policies and procedures in place to manage the operational risks associated with providing virtual asset services,
7. The requirement to have appropriate corporate governance arrangements in place,
8. The requirement to comply with the relevant DIFC data protection regulations,
9. The requirement to provide customers with appropriate disclosures regarding the risks and nature of virtual asset services, as well as any conflict of interests that may arise in the course of providing such services.

Are VASPs providing virtual asset services from offshore to persons in the Dubai International Financial Centre (DIFC) subject to regulation in the Dubai International Financial Centre (DIFC)?

Virtual Asset Providers providing virtual asset services from offshore to persons in DIFC are subject to regulation in DIFC. Specifically, the regulation of VASPs is detailed in the DIFC

Rulebook's DIFC GEN, which applies to all VASPs regardless of whether they provide services from within or outside the DIFC.

Therefore, if a VASP provides virtual asset services to persons in DIFC from offshore, it must still comply with the regulatory requirements explained in the GEN, which includes obtaining DFSA authorisation or registration, complying with AML/CTF obligations, ensuring the safety and security of client assets, implementing appropriate risk management systems, and providing appropriate disclosures to customers.

What are the main requirements for obtaining licensing / registration as a VASP in the Dubai International Financial Centre (DIFC)?

Under the Digital Assets Law (DIFC Law No. 2 of 2024) and the updated regulatory framework provided by the DFSA, obtaining a license or registration as a VASP in DIFC involves several specific requirements designed to ensure compliance, risk management, and consumer protection. Under the Digital Assets Law, DIFC has established specific licensing and registration requirements for VASPs based on the nature of their business activities. There are different categories of licenses, each tailored to the type of services provided. For instance, entities engaging in high-risk activities such as operating trading platforms for Digital Assets must obtain an Alternative Trading System (**ATS**) license. This license requires technological infrastructure, advanced cybersecurity measures, and compliance with strict AML/CFT standards. Market makers or credit providers fall under the Category 2 license, which necessitates substantial capital reserves and comprehensive risk management systems. STP brokers dealing on a matched principal basis need a Category 3A license, while discretionary portfolio managers require a Category 3C license. These licenses come with medium-level fees and specific requirements for managing client portfolios and maintaining strong governance frameworks.

For those offering low-risk services such as advisory or arrangement activities, a Category 4 license is required, which involves lower fees and minimal capital requirements. VASPs must ensure they have a physical office in the DIFC, with core functions like compliance and risk management being managed locally. Additionally, the DFSA imposes a range of licensing fees, which include an initial registration fee that can range from AED 50,000 to AED 100,000, and annual renewal fees varying between AED 20,000 and AED 50,000, depending on the license category and scope of activities.

Application process: A VASP must submit a detailed application to the DFSA using the prescribed forms, specifically tailored for Digital Asset activities. The application must include comprehensive information about the proposed business model, governance structure, and the types of Digital Assets the entity plans to handle. This documentation must demonstrate how the VASP will comply with the requirements set out in both the Digital Assets Law and the DFSA Rulebook, including the AML/CFT module.

To be authorised as a VASP, the entity must have a physical place of business within the DIFC, with key management personnel based in the jurisdiction. The core operational functions, such as compliance, risk management, and finance, should be conducted from this location. Also, the VASP must ensure governance arrangements, with clear policies to

prevent conflicts of interest in providing Digital Asset services. This includes having independent compliance and risk management functions. Additionally, the entity must demonstrate that it has sufficient financial resources to conduct the proposed Digital Asset business. This includes meeting specific capital requirements, which are calibrated based on the risk profile of the Digital Asset activities being undertaken.

Furthermore, the VASP must have adequate human resources with relevant qualifications and experience in the Digital Asset industry. This includes employing personnel who are knowledgeable in technology, financial services, and regulatory compliance. Also. the VASP must establish systems and controls that are appropriate for the scale, nature, and complexity of its Digital Asset activities. This includes advanced technological infrastructure for managing Digital Assets securely, monitoring transactions, and preventing unauthorised access.

Moreover, the applicant must submit a clear business model that outlines how Digital Assets will be generated, issued, traded, or redeemed. Additionally, the VASP must have well-documented policies and procedures in place for the management of these processes.

The new regulatory framework imposes stringent AML/CFT requirements. VASPs must implement comprehensive AML/CFT policies, including customer due diligence (**CDD**), transaction monitoring, and suspicious activity reporting. The DFSA requires VASPs to appoint a dedicated AML/CFT officer who is qualified and experienced in handling Digital Asset transactions.

Also, Licensed VASPs are required to comply with ongoing reporting obligations to the DFSA. This includes regular financial reporting, disclosure of any material changes in business operations, and immediate reporting of any security breaches or incidents that could impact clients or the market. Additionally, the DFSA may impose additional requirements on VASPs engaged in high-risk activities, such as operating trading platforms, custody services, or dealing with high-risk Digital Assets like algorithmic or privacy tokens. These may include enhanced due diligence, increased capital requirements, or additional regulatory oversight.

Moreover, VASPs must comply with the entire DFSA Rulebook, including the AML, Conduct of Business (**COB**), and Prudential - Investment, Insurance Intermediation, and Banking Business (PIB) modules, as applicable. The DFSA may also reference other regulatory instruments, such as the Markets Law and the Data Protection Law, to ensure comprehensive compliance across all aspects of Digital Asset operations.

The DFSA reserves the right to impose additional conditions or requirements on a case-by-case basis, depending on the nature and complexity of the Digital Asset activities proposed. This may include specific restrictions on certain activities, additional reporting requirements, or enhanced regulatory scrutiny.

What are the main ongoing requirements for VASPs regulated in the Dubai International Financial Centre (DIFC)?

Virtual asset providers regulated in DIFC must comply with several ongoing requirements, as per the Digital Assets Law and the DIFC Rulebook's DIFC GEN. The main ongoing requirements for VASPs regulated in DIFC as per the Rulebook are as follows:

1. *Continuous Compliance*: VASPs must continuously comply with the regulatory requirements of the GEN, including all applicable rules and standards, as well as all relevant local and international regulations.
2. *Risk Management Systems*: VASPs must establish and implement extensive risk management systems that are appropriate for the nature, scale, and complexity of their virtual asset services. These systems must be reviewed and tested regularly to ensure they are effective and adequate.
3. *AML/CTF Obligations*: VASPs must have effective anti-money laundering (**AML**) and counter-terrorist financing (**CTF**) policies, systems, and procedures in place to prevent their services from being used for money laundering or terrorist financing activities.
4. *Client Asset Protection*: VASPs must take appropriate steps to safeguard client assets held by the provider, and to ensure that these assets are not used for unauthorised purposes or subject to undue risk.
5. *Customer Disclosures*: VASPs must make appropriate disclosures to their customers regarding the nature, risks, and costs of their virtual asset services, as well as any limitations or conditions that apply to these services.
6. *Reporting Obligations*: VASPs must maintain appropriate records and reporting systems that enable them to report to the DFSA on a regular basis, as well as in response to any specific requests or requirements.
7. *Notification Obligations*: VASPs must notify the DFSA promptly of any material changes that occur in their operations or circumstances that could affect their regulatory status or compliance with the requirements of the GEN.
8. *Cybersecurity Obligations*: VASPs must establish and maintain extensive cybersecurity systems, policies, and procedures to protect their systems and data from unauthorised access or use, and to ensure the confidentiality, integrity, and availability of these assets.

The new Digital Assets Law (DIFC Law No. 2 of 2024) introduces several additional ongoing requirements, that are not explicitly covered in the DIFC GEN of the DFSA Rulebook. These additional requirements include:

1. *Enhanced Governance and Oversight*: The law mandates the establishment of specialised governance structures specifically for managing Digital Asset risks. This includes appointing compliance and risk officers with expertise in digital assets and forming independent audit committees to oversee the compliance and integrity of Digital Asset activities.
2. *Digital Asset-Specific Risk Management*: Beyond the general risk management obligations in the GEN, the new law requires VASPs to implement risk management strategies that specifically address the unique risks associated with Digital Assets. This includes handling issues like market volatility, the security of digital wallets, and technological risks linked to blockchain networks.
3. *Advanced AML/CFT Measures*: The Digital Assets Law introduces advanced AML/CFT obligations tailored to Digital Asset activities. VASPs must use blockchain analytics

tools to monitor and trace transactions, especially those involving high-risk assets like privacy tokens. Enhanced due diligence is required for customers engaging in high-risk transactions.

4. *Smart Contract Compliance*: VASPs involved in the creation or deployment of smart contracts must ensure that these contracts are secure and compliant with the law. This involves conducting thorough audits of the smart contract code to identify and mitigate vulnerabilities, which is not a requirement under the general GEN provisions.
5. *Detailed Cybersecurity Obligations*: While the GEN requires basic cybersecurity measures, the new law outlines specific requirements for securing digital wallets, private keys, and distributed ledger systems. VASPs must conduct regular cybersecurity audits, implement multi-layered security controls, and establish comprehensive data protection mechanisms to safeguard digital assets from advanced cyber threats.
6. *Obligations Related to System Integrity*: The law requires VASPs to maintain the integrity and reliability of their technology systems. This includes regular system testing, implementing backup and disaster recovery plans, and ensuring that their systems are capable of handling operational disruptions without compromising the security of digital assets.
7. *Consumer Protection and Transparency*: VASPs must provide transparent and comprehensive information to consumers about the nature of Digital Asset services, associated risks, and the legal status of Digital Assets across different jurisdictions. This level of consumer protection goes beyond the general disclosure requirements in the GEN module.

What are the main restrictions on VASPs in the Dubai International Financial Centre (DIFC)?

With the implementation of the new Digital Assets Law (DIFC Law No. 2 of 2024), several restrictions have been introduced, building on the earlier Crypto Token Regime. Below is a list of the main restrictions that apply to VASPs, including both existing and new provisions:

1. VASPs are prohibited from offering any financial services or engaging in activities related to Digital Assets unless they have been duly licensed and authorised by the DFSA. This includes activities such as issuance, trading, custody, and advisory services related to Digital Assets. Unlicensed activities are strictly forbidden and subject to severe penalties.
2. Only Digital Assets recognised by the DFSA can be offered or traded within the DIFC. Specific categories of Digital Assets, such as algorithmic and privacy tokens, remain restricted due to their high-risk nature. VASPs must ensure that all Digital Assets they deal with comply with these recognition standards.
3. VASPs are not allowed to engage in financial promotions related to unrecognised Digital Assets. All promotional activities must be approved by the DFSA and must provide clear, accurate, and non-misleading information. The new law emphasises strict oversight of marketing materials to protect investors from deceptive practices.

4. The new law imposes stricter staffing requirements, requiring VASPs to employ personnel with specialised knowledge in digital asset technology and regulation. This includes mandatory positions such as a Chief Compliance Officer (**CCO**) and Chief Information Security Officer (**CISO**), who must have relevant expertise and experience in the digital asset space.
5. VASPs must maintain strict custody and control of client assets, ensuring that they are segregated from the firm's own assets. Enhanced measures are required for the protection and secure storage of Digital Assets, including the use of multi-signature wallets and cold storage solutions for client funds.
6. The new law introduces enhanced AML/CFT obligations. VASPs must implement sophisticated transaction monitoring systems, conduct enhanced due diligence on high-risk clients, and ensure compliance with international sanctions regimes.
7. The law explicitly prohibits VASPs from engaging in certain high-risk business models, such as decentralised finance (**DeFi**) lending and activities involving high-risk Digital Assets that are not adequately regulated or pose a significant risk to financial stability.
8. VASPs are required to adopt corporate governance frameworks that include clear structures for oversight, risk management, and independent auditing. They must also comply with detailed reporting requirements to the DFSA, including disclosure of any material changes to their business model or operations.
9. Marketing and advertising materials must be fair, clear, and not misleading. The new law requires all promotional content to be pre-approved by the DFSA to ensure that it accurately reflects the risks associated with Digital Assets and the nature of the services provided.
10. VASPs utilising smart contracts or other advanced technologies must ensure these technologies are secure, transparent, and comply with legal standards. They must conduct regular code audits and have processes in place to rectify any vulnerabilities promptly.
11. Similar to the previous regime, the new law maintains prohibitions on dealing with certain types of Digital Assets, such as privacy coins and unbacked stablecoins. Additionally, any Digital Asset that poses a significant risk of fraud, market manipulation, or is otherwise deemed high-risk by the DFSA is prohibited.
12. The law specifies stricter penalties for non-compliance, including substantial fines, license suspension or revocation, and, in severe cases, criminal prosecution. The DFSA is empowered to take swift action against VASPs that breach these restrictions, including initiating criminal investigations and imposing sanctions.

What are the main information that VASPs have to make available to its customers?

The DIFC GEN and the Digital Assets Law lists several pieces of information that regulated virtual asset trading platforms must make available to their customers. Under the GEN Rulebook, such information include:

1. The risks associated with investing in virtual assets and the applicable fees for products and services.
2. The regulatory status of the virtual asset.
3. Whether there is adequate transparency relating to the virtual asset, including sufficient detail about its purpose, protocols, consensus mechanism, governance arrangements, founders, key persons, miners and significant holder.
4. The size, liquidity and volatility of the market for the virtual asset globally.
5. The adequacy and suitability of the technology used in connection with the virtual asset.
6. Whether risks associated with the virtual asset are adequately mitigated, including risks relating to governance, legal and regulatory issues, cybersecurity, and other financial crime.

In addition, regulated virtual asset trading platforms must make arrangements with a custodian that segregates the virtual assets of customers from their own property. They also must make sure that their customers' virtual assets are subject to a clear and identifiable legal title and provide regular statements on the digital assets held by the custodian to the customers. Furthermore, they have to ensure that reasonable steps are taken to secure the safekeeping of the virtual assets held in custody. They must have effective systems and procedures to monitor and maintain the security of their own systems, and take appropriate measures to safeguard against unauthorised access, breach of confidentiality, and cyber-attacks.

Now, under the new Digital Assets Law (DIFC Law No. 2 of 2024), virtual asset trading platforms have additional obligations beyond those outlined in the DIFC GEN of the DFSA Rulebook. These platforms must provide comprehensive and detailed information to their customers about the specific risks associated with each type of Digital Asset offered, including potential price volatility, liquidity issues, and technological vulnerabilities. They are also required to disclose detailed technical information about the underlying technology of the Digital Assets, such as consensus mechanisms, smart contract functionality, and any known vulnerabilities. For assets or services that rely on smart contracts, trading platforms must make available audit reports that highlight any vulnerabilities in the smart contracts and the measures taken to address them, ensuring customers are fully informed about the risks involved.

Furthermore, the law mandates that trading platforms offer real-time access to comprehensive market data, including live prices, trading volumes, and order book information, to provide customers with a transparent view of the trading environment. In addition to segregating customer assets, platforms must provide detailed information on how these assets are safeguarded, including the use of third-party custodians, insurance coverage, and contingency plans in case of insolvency or platform failure. Enhanced disclosures are also required about the platform's governance structure, the roles and responsibilities of key personnel, and the regulatory status, including any conditions or restrictions imposed by the DFSA. Customers must be kept informed of any changes to the platform's regulatory standing.

The law also imposes stringent requirements on cybersecurity and data protection. Platforms must disclose the specific measures they have in place to protect customer data and Digital Assets, such as encryption protocols, multi-factor authentication, and incident response plans for cyberattacks. In terms of fees and costs, trading platforms must provide a comprehensive breakdown of all associated charges, including hidden fees such as network or custodial fees, to ensure customers are fully aware of the costs involved in trading, withdrawing, or transferring Digital Assets.

Additionally, trading platforms are required to inform customers about their transaction monitoring systems for detecting and reporting suspicious activities, including measures taken when such activities are identified. In case of security breaches, service outages, or other significant disruptions, platforms must promptly notify affected customers, detailing the nature of the incident, its impact on customer assets, and the steps being taken to resolve the issue.

What market misconduct legislation/regulations apply to virtual assets?

In DIFC, the market misconduct legislation and regulations that apply to Virtual Assets are primarily set out in the DFSA's Market Conduct module (**MKT**).

The Market Conduct module includes conduct standards and regulatory requirements to ensure that financial intermediaries maintain confidence within the markets in which they operate. It also recognises that it is difficult to regulate virtual assets as their value primarily depends on market forces, and are subject to various risk factors.

The module focuses on the following areas:

1. The prohibition of insider dealing and market manipulation.
2. The ban on the use of misleading or false statements and deceptive practices.
3. The requirement to maintain phone and written records or electronic communications that may relate to transactions in financial instruments, including Virtual Assets.
4. The power to investigate and enforce the rules and regulations governing virtual asset transactions, which are subject to detection risk and require a high degree of scrutiny.

Another document to consider is the AML/CFT module of the DFSA. This sets out the obligations and requirements of regulated entities, such as Virtual Asset Service Providers (**VASPs**), to comply with the relevant AML/CFT regulations and provide adequate procedures and controls to tackle money laundering and terrorism financing risks that arise in relation to Virtual Assets.

The Digital Assets Law 2024 introduces additional elements beyond those covered by the DFSA's Market Conduct (**MKT**) and AML/CFT modules. It provides a clear legal framework for Digital Assets, including specific definitions of control and ownership, ensuring that individuals or entities holding Digital Assets have legal title when they can prevent others from using or benefiting from the asset. It also mandates thorough audits for smart contracts to prevent fraudulent or deceptive practices. Furthermore, the law enhances rules

on taking security over Digital Assets and introduces recovery mechanisms for assets lost due to errors or unauthorised transfers.

4. Regulation of other crypto-related activities in the Dubai International Financial Centre (DIFC)

Are managers of crypto funds regulated in the Dubai International Financial Centre (DIFC)?

In the DIFC, managers of crypto funds are regulated and subject to comprehensive oversight. Any entity or individual offering financial services related to virtual assets, including the management of crypto funds, must obtain authorisation and comply with the regulations established by the DFSA. The DFSA's regulatory framework governs financial services involving digital assets, allowing firms in the DIFC to apply for and obtain a license to manage and provide related services.

According to the DIFC Markets Law, managers of collective investment funds investing in crypto assets must also comply with the provisions set out for collective investment schemes. These funds include enterprises, such as investment companies or unit trusts, that pool investor funds for collective investment in securities or financial assets, including crypto tokens. The framework emphasises risk-spreading, protecting investors by ensuring adherence to compliance standards like prospectus requirements, disclosure obligations, and rules against misleading statements.

In addition to this, the Digital Assets Law 2024 introduces further obligations specific to managers of crypto funds. This law enhances the regulatory framework by clearly defining the legal ownership and control of digital assets, ensuring that managers handling crypto assets have explicit legal rights and responsibilities. The law also introduces more stringent reporting and disclosure requirements related to how crypto assets are secured, stored, and transferred. Managers are now required to ensure that any smart contracts or blockchain-based protocols used in fund management are secure and regularly audited. Additionally, the law mandates stronger risk management practices, addressing specific risks like market volatility and technological vulnerabilities associated with digital assets. It also establishes mechanisms for recovering assets that may be lost due to errors or unauthorised transfers, further safeguarding investors in the digital asset space.

Are distributors of virtual asset funds regulated in the Dubai International Financial Centre (DIFC)?

Distributors of virtual asset funds in the DIFC are subject to regulatory oversight under the DFSA's Markets Law, which extends to collective investment funds, including those involving virtual assets. These distributors must comply with specific authorisation and regulatory requirements, such as disclosure obligations, ongoing reporting, and conduct of business standards. The DFSA ensures that distributors adhere to governance and safeguarding measures aimed at protecting investors and maintaining market integrity.

In addition to these provisions, the Digital Assets Law 2024 introduces further regulatory obligations for distributors of virtual asset funds. The new law provides a clearer legal framework for the management and distribution of digital assets, requiring distributors to ensure the security and proper control of digital assets. Distributors are also subject to enhanced transparency obligations, including detailed disclosures about the risks, technology, and processes associated with the digital assets they handle.

Furthermore, the Digital Assets Law mandates that distributors of virtual asset funds implement rigorous AML/CFT measures and other risk management controls to prevent financial crimes and ensure the safe handling of investor assets. These requirements are in addition to the ongoing regulatory standards in the DFSA's General (**GEN**) module, which governs Crypto Asset Activities. Distributors engaged in offering, arranging, or advising on virtual asset funds must obtain DFSA authorisation and comply with the specific requirements related to financial services for virtual assets.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in the Dubai International Financial Centre (DIFC)?

Intermediaries seeking to provide trading or advisory services on virtual assets in the DIFC are subject to strict regulatory requirements under the Markets Law. These intermediaries must obtain authorisation from the DFSA to offer services such as dealing in investments, arranging deals, and providing custody services related to virtual assets. This framework ensures that entities dealing in virtual assets comply with standards similar to those applied to traditional securities, including prudential standards, client money rules, custody requirements, and thorough due diligence on clients.

Advisory services related to virtual assets also require DFSA authorisation. Intermediaries must provide advice that is fair, honest, and independent, ensuring that clients receive full disclosure of relevant information to make informed decisions. This includes advising clients on the risks and characteristics of virtual assets and ensuring that advice is based on accurate and transparent data.

The Digital Assets Law 2024 expands on these existing requirements by introducing enhanced transparency obligations and stricter risk management and AML/CFT controls. Intermediaries now face more detailed rules regarding the security and custody of digital assets, as well as mandatory audits for any smart contracts used in their operations. These additions ensure greater protection for clients and the proper handling of virtual assets, reducing the risk of fraud, mismanagement, or technological vulnerabilities.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in the Dubai International Financial Centre (DIFC)?

The DIFC is expected to see several regulatory updates related to digital assets and crypto activities in the near future. Key upcoming areas include more detailed regulations for decentralised finance platforms and stablecoins, with likely emphasis on consumer protection, liquidity requirements, and risk management. Additionally, tokenization of traditional assets such as real estate and securities is anticipated to be a focus, providing clearer legal frameworks for issuing and trading tokenized assets.

The DIFC is also expected to strengthen rules around cross-border digital transactions, enhancing global cooperation and regulatory alignment, particularly concerning AML/CFT.

Has there been any notable events in the Dubai International Financial Centre (DIFC) that has prompted regulatory change recently?

Recently, there have been significant developments in the regulation of virtual assets in the DIFC that have prompted notable changes. On March 8, 2024, the DIFC enacted its Digital Assets Law (DIFC Law No. 2 of 2024), which is considered a significant piece of legislation as it comprehensively defines the legal characteristics of digital assets, including cryptocurrencies and NFTs. This law aims to provide legal clarity and enhance investor protection, ensuring that the DIFC keeps pace with technological advancements in the financial sector.

The new Digital Assets Law also amends several existing laws within the DIFC to incorporate digital assets into various legal frameworks, including contracts, obligations, and securities laws. This comprehensive approach contrasts with previous regulations that may not have fully addressed the complexities associated with virtual assets. The enactment of the Digital Assets Law marks a significant step forward in creating a clear and cohesive regulatory environment for virtual assets in the DIFC.

6. Pending litigation and judgments related to virtual assets in the Dubai International Financial Centre (DIFC) (if any)

The case Gate MENA DMCC (formerly Huobi OTC DMCC) and Huobi MENA FZE v. Tabarak Investment Capital Limited and Christian Thurner [2020] DIFC TCD 001 involves a dispute over the theft of 300 Bitcoins. This case is significant because it was the first cryptocurrency case heard by the DIFC courts. The judgment in this case was made on 5th October 2022, and it concluded that Bitcoin is property and fell within the definition of 'property' by the Dubai International Financial Centre. The case has been appealed, and there are currently eight grounds for appeal, including breach of confidence, breach of contract, negligence,

and breach of fiduciary duty. This appeal will provide valuable insights into custody and escrow services for digital assets.

7. Government outlook on virtual assets and crypto-related activities in the Dubai International Financial Centre (DIFC)

The government outlook on virtual assets and crypto-related activities in the DIFC has evolved with the introduction of the Digital Assets Law (DIFC Law No. 2 of 2024). Established under UAE Federal Decree No. 35 of 2004, the DIFC continues to support economic growth and innovation in the region, while emphasizing the importance of regulatory oversight. The DIFC is recognized as a Financial Free Zone under Federal Law No. 8 of 2004, granting it the authority to develop its own legal and regulatory framework for civil and commercial matters, now encompassing the rapidly growing digital asset sector.

With the enactment of the Digital Assets Law in 2024, the DIFC has expanded its regulatory framework to provide clearer rules for Digital Asset activities, including trading, custody, and advisory services. This law builds upon the previously established Crypto Token Regime, which extended the scope of existing financial services to cover products and services related to crypto tokens. The new law enhances this framework by introducing specific provisions for different types of digital assets, including security tokens, utility tokens, and other asset classes, while also imposing stricter compliance obligations, such as enhanced AML measures and transaction monitoring.

The DFSA remains the regulatory authority overseeing these activities and continues to provide guidance on risk management, ensuring that businesses operating in the digital asset space are compliant with international standards. The DIFC courts, which operate independently of the UAE's civil and commercial courts, play a crucial role in ensuring the enforceability of judgments within the DIFC and throughout Dubai.

8. Advantages of setting up a VASP in the Dubai International Financial Centre (DIFC)

Setting up a VASP in the DIFC offers several strategic advantages. The DIFC provides a supportive legal framework that allows 100% foreign ownership, unrestricted access to foreign talent, and full repatriation of capital, creating a business-friendly environment for international investors. In terms of taxation, the DIFC offers a favorable regime, with no taxes on profits, capital gains, or employee income, which has been in effect for 50 years since its establishment in 2004.

The DIFC operates with an independent regulator, the DFSA, and is underpinned by a common law judicial system, which provides businesses with transparency, legal certainty, and a risk-based regulatory approach. This structure ensures a balanced approach to regulation, where compliance obligations are proportionate to the risk profile of the business, particularly important for VASPs operating in a complex and evolving sector.

Furthermore, the DIFC offers access to a diverse and dynamic financial ecosystem, with a high concentration of international firms, investment funds, banks, and other financial institutions. This creates ample opportunities for networking, partnership-building, and regional deal-making. As a result, the DIFC has become a favored destination for businesses looking to establish a regional presence in the Middle East, Africa, and South Asia region.

September 2024

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Dubai (UAE)

1. Virtual asset laws and regulations in Dubai (UAE)

Dubai has been at the forefront of developing its virtual assets regulatory landscape. In March 2022, Dubai enacted the Regulation of Virtual Assets law (**VAL**) and established the Dubai Virtual Assets Regulatory Authority (**VARA**) to oversee the regulation of virtual assets in Dubai. The VARA is responsible for licensing and regulating virtual assets, including crypto assets, digital assets, and NFTs, across Dubai's mainland and free zone territories, except for the Dubai International Financial Centre (**DIFC**). Additionally, Dubai Multi Commodities Centre Authority (**DMCCA**) and Dubai Airport Freezone Authority (**DAFA**) both have their own regulatory frameworks for virtual assets, aimed at aligning with the requirements laid out in the SCA Virtual Asset Regulation Framework.

What is considered a virtual asset in Dubai (UAE)?

As per the definition given in Law No.4 of 2022 on the regulation of VAL, a 'virtual asset' is a digital representation of value which can be digitally traded or transferred or used as an exchange or payment tool for investment purposes and does not include digital representation of fiat currencies or financial securities and a 'virtual token' is a digital representation of a group of rights which can be issued and traded digitally through a virtual asset platform (a platform operated by a virtual asset provider licensed by VARA).

What are the relevant laws and regulations in Dubai (UAE)?

Here is an outline detailing the applicable laws on virtual assets in Dubai and their evolution:

1. Sharia Ruling on Cryptocurrencies (Fatwa No. 89043): In 2018, the UAE's General Authority for Islamic Affairs and Endowments issued a fatwa (89043) declaring Bitcoin

and cryptocurrencies ineligible for trading. According to Sharia criteria, these virtual currencies lack state recognition, making them impermissible under Islamic law.

While the quoted fatwa deems cryptocurrencies impermissible, it notes that regulated and authorities-adopted cryptocurrencies may become permissible.

2. Law No. 4 of 2022: Regulating Virtual Assets in the Emirate of Dubai was enacted to establish regulatory framework governing activities and operations related to virtual assets. The Objective was to regulate and oversee the issuance, offering, and relevant disclosure processes of virtual assets and virtual tokens in Dubai.
3. Cabinet Resolution No. 111/2022: Regulating Virtual Assets and their Service Providers was brought out to regulate virtual assets and their service providers in the UAE, to put in place legislation, to define and ensure the rights and duties of all relevant parties, regulate the virtual asset sector, comply with provisions related to Combating Money Laundering and the Financing of Terrorism and Illegal Organisations.
4. Cabinet Decision No. 112/2022: Was issued to delegate certain competencies related to the regulation of Virtual Assets to the Dubai VARA, to ensure proper implementation of the provisions of Cabinet Decision No. 111/2022 as well as to establish a unified and appropriate work mechanism to regulate the process of supervision and control over VASPs licensed by the Dubai VARA, and the mechanism for sharing fees, commissions, and fines.
5. Administrative Order No.01/2022: issued by the Dubai VARA in January 2022, aimed to regulate marketing, advertising, and promotional activities related to virtual assets within Dubai. This order introduced key definitions and applied to all forms of marketing, promotional, and advertising content connected to virtual assets or virtual asset-related activities. It outlined various compliance requirements for entities involved in such activities and granted VARA the authority to take corrective measures in case of non-compliance. These measures included the right to suspend marketing activities, impose fines, or revoke the licenses of entities that failed to meet the prescribed standards. In 2023, the regulations governing marketing activities were updated and revised as part of VARA's Marketing and Promotions Rules, expanding the scope of marketing regulations to ensure enhanced transparency and consumer protection. These revised rules will take effect from October 1, 2024.
6. Administrative Order No.02/2022: issued in March 2022, built upon the marketing regulations established under the Dubai Virtual Asset Law, ensuring that marketing and advertising related to virtual assets are conducted in a manner that is non-misleading and compliant with VARA's standards. The primary objective of this order was to safeguard consumers from deceptive marketing practices while promoting fair advertising in the virtual asset space. The penalties for non-compliance were stringent, allowing VARA to impose fines of up to AED 200,000 for each violation, suspend marketing activities for up to six months, revoke any licenses issued by VARA, and require entities to make public statements acknowledging their violations. These provisions have also been updated in alignment with the broader Virtual Assets and

Related Activities Regulations 2023, with the new rules scheduled to be enforced starting October 1, 2024.

7. The Virtual Assets and Related Activities Regulations 2023: were initially issued on February 7, 2023, to establish a comprehensive regulatory framework for VASPs. These regulations were designed to address licensing, compliance, market conduct, and consumer protection in the virtual asset sector. Supervision and enforcement by VARA included oversight, examination, and the authority to investigate and impose fines for non-compliance with anti-money laundering and counter-terrorism financing obligations. It established a compliance framework with clear obligations, marketing regulations, and enforcement measures to maintain market integrity. Information protection was prioritised, extending to safeguarding against unauthorised disclosure or use.

   Since their issuance, these Regulations have undergone several amendments. It includes expanded definitions that now cover a broader range of services, such as advisory roles, decentralised finance (**DeFi**), and custodial services. In addition, stricter marketing regulations have been introduced, focusing on transparency and consumer protection. These rules require entities to clearly disclose risks associated with virtual assets in all marketing materials, ensuring that consumers are well-informed. Furthermore, new licensing requirements have been established, obliging all entities engaged in virtual asset marketing to obtain specific licenses tailored to their activities. The updated framework also introduces a graduated penalty system, categorising breaches based on severity, with corresponding penalties designed to enforce compliance effectively. These penalties range from fines to more severe measures such as the suspension or revocation of licenses, depending on the nature of the violation. The latest amendments to the VARA Regulations are scheduled for enforcement on October 1, 2024.

Compulsory Rulebooks

1. The Company Rulebook: Governing VASPs licensed by the VARA in Dubai, explains crucial requirements for company operations. The rules state that VASP Boards need qualified individuals overseeing procedures, and Senior Management must be qualified, working under Board direction. Outsourcing deals should cover notice periods, finances, and service standards. Policies addressing conflicts of interest and regular fitness assessments for staff are important. For transactions with related parties, monthly reports to VARA are required, with document submission if requested. VARA can revoke or suspend approvals if fit and proper requirements aren't met by individuals or VASPs.
2. The Compliance and Risk Management Rulebook: Covers general principles for managing compliance risks, mandates effective compliance systems, and designates duties for the Compliance Officer. In addressing Anti-Money Laundering (**AML**) and Combating the Financing of Terrorism (**CFT**), it requires a Money Laundering Reporting Officer (**MLRO**) and sets criteria for client due diligence. The Rulebook also prohibits

corrupt payments, emphasising strict compliance with anti-bribery and corruption rules.

3. The Technology and Information Rulebook: Is designed to enhance safety for VASPs and protect individuals during virtual asset transactions. It establishes mandatory requirements across three parts: Part I focuses on technology governance and security measures, including cybersecurity policies and virtual asset transaction security; Part II addresses personal data protection, ensuring compliance with relevant laws and regulations; and Part III outlines guidelines for VASPs to use and protect confidential information.
4. The Market Conduct Rulebook: Sets specific guidelines for VASPs to regulate their behavior, focuses on marketing regulations, client agreements, and complaints handling. The Rulebook defines who can invest in virtual assets and requires VASPs to disclose key information publicly. Market transparency is emphasised, prohibiting VASPs from trading virtual assets for their own accounts without authorisation from the VARA.

VA Activity and other Service Rulebooks

1. The Advisory Services Rulebook: For VASPs ensures transparent, client-centric advice and adherence to VARA regulations. It mandates clear risk disclosure, unbiased advice, and the collection of client information for tailored recommendations. The rulebook underscores staff competency, fact-checking for accuracy, and encourages VASPs to assess diverse virtual assets, providing clients with varied investment options.
2. The Broker Dealer Service Rulebook: Establishes specific rules and guidelines, focusing on investor protection, fair treatment, and the prevention of abusive practices. The rulebook sets minimum requirements and regulatory obligations for various areas, including best execution, market conduct, technology, information, compliance, risk management, and capital/prudential requirements. Applicable to all Emirate-based VASPs offering broker-dealer services, irrespective of size, the rulebook covers policies and procedures for detecting and preventing market offenses, ensuring best execution for client orders, and establishing rules for margin trading, including information collection and segregation of client accounts.
3. The Custody Service Rulebook: It is designed to assist VASPs in managing risks associated with custody services. It provides guidelines including a comprehensive framework for the safekeeping of virtual assets, segregation measures to minimise internal failure risks, and operational risk management policies. The Rulebook mandates regular independent internal audits and requires disclosure of client protections, data privacy, client complaints handling, and whistleblowing policies
4. The Exchange Service Rulebook: This is a vital set of guidelines for VASPs offering Exchange Services in the Emirate of Dubai, impacting crypto traders in the UAE. The rules cover board requirements, internal policies, disclosure of conflicts of interest, client privacy, and complaint handling. They also address Exchange Services rules, including trading venue participants, code of conduct, business continuity, and market

surveillance. Specific regulations for margin trading, such as compliance, VARA approval, obligations, prudential requirements, margin agreements, and dispute resolution, are outlined. Overall, these guidelines aim to ensure compliance and risk management in the crypto trading sector in Dubai.

5. The Lending and Borrowing Service Rulebook: Emphasises risk mitigation through liquidity and collateral standards, reinforced by accountability through regular audits. Key requirements include maintaining sufficient virtual assets, regular collateral monitoring, and notifying clients about non-withdrawable virtual assets. The rulebook also explains reporting practices, due diligence assessments, and independent third-party audits for risk management. Overall, it sets clear guidelines to ensure transparency, risk mitigation, and regulatory compliance in lending and borrowing services provided by VASPs.
6. The VA Management and Investment Service Rulebook: Provides guidelines on client suitability, ensuring VASPs only serve clients suitable for their services based on experience and financial situation. The rulebook emphasises the importance of written client agreements, covering terms like account termination, asset value fluctuation, and complaint procedures. VASPs are required to disclose all fees transparently to avoid confusion, ensuring they are neither excessive nor unclear. Additionally, the rulebook explains the need for effective risk management, requiring VASPs to monitor and promptly address liquidity and market risks.
7. The VA Transfer and Settlement Service Rulebook: Aims to enhance efficiency and risk awareness in the virtual asset landscape by emphasising policies for rectifying incomplete transfers. Key provisions include addressing non-executed or defectively executed transfers, ensuring client authorisation for all transfers, and maintaining client instruction records for at least eight years. The rulebook also stresses risk disclosure to inform clients about potential issues, such as irreversible transactions and technical difficulties. It emphasises timely execution of transfers and sets clear guidelines for smooth processes, risk awareness, and client protection in virtual asset transfer and settlement services.
8. The VA Asset Issuance Rulebook: Sets rules for creating and using virtual assets. It focuses on how issuers should behave, what information they must share in a whitepaper, and the ongoing rules they must follow after creating virtual assets. The rulebook requires Issuers to get approval and follow specific processes laid down by the VARA. Issuers are not allowed to use virtual assets for illegal activities, and they have to follow rules related to supervision and checks by VARA.
9. The Fiat Referenced Virtual Asset (**FRVA**) Rulebook: An annexure to the VA Issuance Rulebook, lays out rules for issuing Fiat Referenced Virtual Assets. It covers approval requirements, due diligence, risk management, corporate governance, audits, and reserve assets. The rulebook adds disclosures about reference currency, FRVA creation and redemption policies, and marketing guidelines for transparency. Capital requirements ensure issuer stability, including paid-up capital, net liquid assets, insurance, and VARA-defined needs. Crucially, the rulebook prohibits FRVA issuers from offering incentives for purchasing or holding FRVAs.

Who do such laws and regulations apply to?

The virtual assets laws and regulations in Dubai apply to all Virtual Assets and VA Activities in the Emirate. Here is a list of entities and individuals to whom the virtual assets laws and regulations apply in Dubai, based on the Virtual Assets and Related Activities Regulations 2023 issued by VARA:

1. Any individual or entity conducting Virtual Asset Activities in the Emirate of Dubai, including free zones and special development zones.
2. Any person or entity issuing Virtual Assets in the course of a business within Dubai.
3. Any person or entity that intends to provide Virtual Asset Services in Dubai including an exchange, custodian wallet provider.
4. Any person or entity intending to engage in large proprietary trading in Virtual Assets.
5. Anyone that is required to carry out an AML/CFT risk assessment for its business relating to Virtual Assets in Dubai.

Who are the relevant regulatory authorities in relation to virtual assets in Dubai (UAE)?

1. *VARA*: The VARA enacted under Law No. 4 of 2022, is affiliated with the Dubai World Trade Centre Authority (**DWTCA**), has a clear mission: overseeing the legal framework for businesses dealing with virtual assets in Dubai. This includes crypto assets, digital assets, and Non-Fungible Tokens (**NFTs**). VARA is in charge of licensing and regulation across Dubai's mainland and free zones (excluding Dubai International Financial Centre).
2. *Central Bank of the UAE*: The Central Bank of the United Arab Emirates plays a role in overseeing financial activities, including aspects related to virtual currencies, across the entire UAE, including Dubai.
3. *Securities and Commodities Authority (**SCA**)*: The SCA is a UAE-wide regulatory authority overseeing securities and commodities activities, which may include aspects related to virtual currencies.
4. *Ministry of Economy*: The Ministry of Economy is involved in shaping the overall economic policies of the UAE and may play a role in the broader regulatory landscape.
5. *Dubai Multi Commodities Centre (**DMCC**)*: The DMCC is a free zone authority that has shown interest in fostering blockchain and crypto-related businesses. While it may not be a regulatory authority, it plays a role in supporting the growth of such businesses within its free zone.

VARA, under DWTCA, takes charge of licensing and overseeing the virtual asset sector in Dubai's mainland and free zones, excluding the DIFC. Any laws in Dubai or its free zones conflicting with the Virtual Assets Law get canceled out. However, it's to note that federal laws, especially those from the Central Bank and Securities and Commodities Authority, still apply. Hence, if there's any overlap with activities related to virtual assets, one must also consider them. An understanding has been established between the SCA and DWTCA since

2021, specifically regarding the offering, regulation, issuance, and trading of virtual assets within the DWTCA's free zone.

What are the penalties for breaches of virtual asset laws and regulations in Dubai (UAE)?

The Virtual Assets and Related Activities Regulations 2023, alongside the Rulebooks issued by the VARA, detail penalties and fines for non-compliance. VARA has discretionary powers to enforce actions against entities violating laws, regulations, or directives. These actions range from written reprimands to fines, additional supervision, monitoring, or reporting requirements, as determined by VARA. The fine amounts are described in Schedule 3 of The Virtual Assets and Related Activities Regulations 2023, categorising violations from high to low seriousness, based on the nature and severity of violations:

1. *Category 1*: Violations related to market offenses, compliance, risk management, conduct, or offenses not covered elsewhere. Entities may face fines up to AED 100 million.
2. *Category 2*: Violations related to Virtual Asset Activities, including unauthorised engagement, KYC obligations, reporting, and (**AML/CFT**) requirements. Individuals may incur fines up to AED 50 million, while corporate entities may face fines up to AED 100 million.
3. *Category 3*: Violations not falling under Categories 1 and 2, pertaining to other regulations or directives. Entities may be fined from AED 5 million to AED 15 million.

VARA has emphasised that violators may be required to disgorge profits or avoid losses, with amounts potentially exceeding the previously stated limits, specifically up to 300% of the profits gained or losses avoided.

Regulations specify grounds for fines based on factors like carrying out VA Activities in violation, issuing a Virtual Asset unlawfully, misrepresenting to the public, and breaching Ultimate Beneficial Owner disclosure requirements. VARA considers factors like the nature, seriousness, and impact of the violation, whether it constitutes a market offense, the entity's conduct post-violation, its disciplinary record, VARA's published materials, and actions by other regulatory bodies.

Furthermore, VARA can suspend authorisation issuance, suspend or revoke virtual asset service provider activities, and suspend dealings with virtual assets in specific situations. A Board of Directors resolution from the DWTC Authority describes acts constituting a Virtual Assets Law violation and corresponding penalties. VARA has broader authority to suspend or revoke licenses for VASPs for a period exceeding six months in cases of severe non-compliance. Coordination with the relevant commercial licensing authority in Dubai may lead to the cancellation of the entity's trade license. Violating the Virtual Assets Law carries substantial penalties and broad consequences.

2. Regulation of virtual assets and offerings of virtual assets in Dubai (UAE)

Are virtual assets classified as 'securities' or other regulated financial instruments in Dubai (UAE)?

Virtual assets are not classified as securities or regulated financial instruments in Dubai; rather, they are defined as a digital representation of value that is tradeable and their regulation falls under the recently established VARA according to the Law No.4 of 2022 on the Regulation of Virtual Assets.

As per the definition given in Law No.4 of 2022 on the regulation of Virtual Assets, a 'virtual asset' is a 'digital representation of value which can be digitally traded or transferred or used as an exchange or payment tool for investment purposes and does not include digital representation of fiat currencies or financial securities' and a 'virtual token' is a 'digital representation of a group of rights which can be issued and traded digitally through a virtual asset platform (a platform operated by a virtual asset provider licensed by VARA)'.

Though, according to the Virtual Assets and Related Activities Regulations 2023, the VARA has the power to classify or provide clarification on any Virtual Asset or type of Virtual Asset as being regulated by the Central Bank of UAE or as being prohibited in the Emirate. Therefore, virtual assets may or may not be classified as securities or other regulated financial instruments depending on VARA's classification or clarification.

Are stablecoins and NFTs regulated in Dubai (UAE)?

Stablecoins: Stablecoins are indeed regulated in Dubai under a framework established by the CBUAE and the VARA:

1. Fiat Referenced Virtual Assets (**FRVAs**) are not considered legal tender and are not issued or guaranteed by any government or central bank. They differ from virtual assets representing equity claims or central bank digital currencies (**CBDCs**).
2. The CBUAE has developed a regulatory framework for stablecoins, particularly those pegged to the UAE Dirham (AED). This framework was approved on June 3, 2024, and aims to provide clear guidelines for licensing and oversight of stablecoin arrangements.
3. The reserves backing stablecoins must comply with the regulations set forth by the CBUAE and VARA. These reserves must:
    - 3.1 Consist primarily of cash, with only a minor portion (up to 10%) allowed in high-quality liquid assets.
    - 3.2 Be denominated in the reference currency (AED).
    - 3.3 Be held in segregated accounts with regulated banks or custodians in jurisdictions meeting FATF standards.
    - 3.4 Always have a value exceeding the total volume of payment tokens in circulation.

4. The regulatory framework outlines requirements for VARA approval, additional disclosures, and marketing rules for VASPs issuing FRVAs.
5. VASPs must demonstrate sufficient technical capability and financial resources to ensure the stable backing of FRVAs.
6. VASPs must adhere to licensing requirements, technology standards, data protection policies, and anti-money laundering regulations.
7. VARA holds the authority to impose additional conditions on FRVA issuance beyond standard requirements.
8. Failure to comply with these regulations can lead to revocation of approval or other regulatory actions.

The CBUAE's new regulations will only allow businesses in the UAE to accept dirham-backed stablecoins for transactions, restricting the use of foreign stablecoins like Tether or USDC for payments related to goods and services. Foreign payment tokens may still be used for specific virtual asset purchases, fostering a structured environment for crypto transactions while maintaining regulatory compliance.

NFTs: In Dubai, NFTs are regulated under the framework established by the Dubai VARA. Although NFTs are not automatically classified as virtual assets, financial institutions and banks must carefully evaluate their nature, especially when engaging with businesses that deal with them. This is due to the potential for some NFTs, particularly fractionalised ones or those part of larger collections, to be treated similarly to securities.

Under VARA's regulations, NFTs are recognized as a type of virtual asset. However, in cases where NFTs are fractionalized or part of a larger collection, banks and financial institutions must conduct thorough evaluations to determine whether they should be classified as securities. This requirement ensures that institutions understand the risks and obligations associated with dealing in such assets.

The regulatory framework for NFTs falls under the Virtual Assets and Related Activities Regulations 2023, which were issued by VARA on February 7, 2023. These regulations apply to all VASPs operating in Dubai, including those dealing with NFTs. VASPs are required to obtain a license from VARA, which involves demonstrating sufficient financial resources, adhering to customer due diligence protocols, and establishing risk management policies. For NFTs that may be considered securities, banks and financial institutions are required to obtain legal opinions regarding their classification before entering into agreements with businesses that issue or trade NFTs. This helps ensure that financial institutions fully understand the nature of the assets they are dealing with and comply with the appropriate regulatory standards. Furthermore, VASPs are required to follow strict governance controls and risk management frameworks to mitigate the potential risks associated with NFT transactions.

Additionally, VARA has introduced specific market conduct and transparency rules for the marketing and advertising of NFTs. These regulations are designed to protect consumers by ensuring transparency and preventing misleading marketing practices. Non-compliance

with these regulations can result in penalties ranging from AED 20,000 to AED 200,000, highlighting the importance of adhering to regulatory standards.

Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Dubai (UAE)?

DeFi, short for Decentralised Finance, is a fresh approach to financial services. Instead of relying on traditional banks or intermediaries, it harnesses smart contracts on a special kind of computer network called a public Distributed Ledger Technology (**DLT**). This network consists of many computers working together without a single owner. In the DeFi system, financial activities like lending, investing, and asset exchange happen without the need for a typical middleman. Smart contracts, which act like digital agreements, automatically manage these transactions.

The provisions for DeFi activities are included in Part III of the Virtual Assets and Related Activities Regulations 2023. Here are some of the highlights of the rules for DeFi activities:

1. DeFi operators are required to obtain a license from the VARA before conducting any DeFi activities in the Emirate.
2. The license application process includes providing information about the planned DeFi activities, financial information, and background checks on individuals associated with the application.
3. The DeFi activities that can be conducted by DeFi operators include, but are not limited to, lending, borrowing, exchanging, and investing.
4. Decentralised exchanges (**DEXs**) providing DeFi Activities are subject to various regulatory requirements, such as regulations to prevent market manipulation, insider trading, and other illicit activities.
5. DeFi operators must comply with AML/CFT regulations and any other relevant regulations as deemed by VARA.
6. VARA has prohibited the issuance and use of anonymity-enhanced cryptocurrencies within its jurisdiction, reinforcing its commitment to transparency in financial transactions.

VARA will conduct regular inspections and audits of licensed DeFi operators to ensure compliance with regulations.

Are there any restrictions on issuing or publicly offering virtual assets in Dubai (UAE)?

The Virtual Assets and Related Activities Regulations 2023 prescribe certain requirements and restrictions on the issuing or public offering of virtual assets in Dubai:

1. *Issuance Rules*: Any entity in the Emirate that issues a Virtual Asset in the course of a business must comply with the VA Issuance Rulebook, as may be amended from time to time.

2. *Power to classify Virtual Assets*: VARA has the sole and absolute discretion to classify any Virtual Asset or type of Virtual Asset as being prohibited in the Emirate, and to provide clarification or opinion on the regulatory treatment of any Virtual Asset or type of Virtual Asset.
3. *Prohibited Virtual Assets*: Virtual Assets that may facilitate money laundering or terrorism financing are prohibited, as provided under Article 17 of Law No. 4 of 2022 Regulating Virtual Assets in the Emirate of Dubai. Furthermore, VARA may prohibit Virtual Assets if they are deemed to pose risks to consumers, investors, or market integrity.
4. *Licensing Requirements*: Any entity providing Virtual Asset-related activities or services must be licensed by VARA, subject to the fulfillment of certain requirements. In particular, VARA may grant a license if the entity has met the specified criteria, including fitness and propriety or soundness of its financial affairs.
5. *Compliance with Directives*: VARA may issue directives to any Entity or VASP, requiring them to comply with specific regulatory capital or liquidity requirements, or requiring them to refrain from taking certain actions, in addition to the requirements set out in the Regulations or Rules.
6. *Anonymity-Enhanced Cryptocurrencies*: The issuance of Anonymity-Enhanced Cryptocurrencies and all Virtual Asset Activity related to them is completely prohibited in Dubai.

Anonymity-enhanced cryptocurrencies are digital currencies designed to provide users with extra privacy. They aim to make transactions and user identities more difficult to trace or link, offering a higher level of confidentiality compared to traditional cryptocurrencies.

Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in Dubai (UAE)?

There are some exemptions to the restrictions for virtual asset issuances in Dubai under certain conditions. Specifically, an Entity may issue a Virtual Asset in Dubai without first acquiring a VARA License or approval if it is deemed an Exempt Entity according to the Regulations.

An Entity is considered an Exempt Entity if all of the following conditions are met:

1. The consideration received by the Entity in connection with a VA issuance project does not exceed AED 2,000,000 per project or the equivalent amount in fiat currency or Virtual Assets.
2. The aggregate consideration received by the Entity in connection with all its VA issuances does not exceed AED 10,000,000 or the equivalent amount in fiat currency or Virtual Assets.

VAT Exemptions: Recent amendments to the UAE's VAT regulations have exempted certain activities related to virtual assets from VAT. These include:

1. Transfers and Conversions: The transfer of ownership and conversion of virtual assets, such as cryptocurrencies and NFTs, are exempt from the standard 5% VAT. This exemption applies retroactively from January 1, 2018.
2. Management Services: Management services for investment funds that deal with virtual assets are also exempt from VAT. This includes services related to fund operations and performance monitoring.

The Exempt Entity complies with all other Rules in the VA Issuance Rulebook, including:

1. General Rules that govern the conduct of all business from, or through the Emirates.
2. Whitepapers and public disclosures, including detailed disclosure requirements and risk statements that issuers must provide in whitepapers.
3. Compliance obligations of issuers, including complying with the rules related to technology and security, anti-money laundering and combating the financing of terrorism, marketing regulations, personal data protection, tax reporting and compliance, and books and records.

All transactions for which the Exempt Entity uses an intermediary are handled by Licensed Distributors only. Note that VARA shall have the sole and absolute discretion to decide whether an Entity is an Exempt Entity for the purposes of the Regulations and this VA Issuance Rulebook.

3. Regulation of VASPs in Dubai (UAE)

Are VASPs operating in Dubai (UAE) subject to regulation?

The Virtual Assets and Related Activities Regulations 2023 mentions the VASP as an entity that provides one or more virtual asset services to customers, including but not limited to, buying, selling, transferring, exchanging, safekeeping, and/or administering virtual assets. This broadly includes any person who carries out the business of providing virtual asset services in or from within Dubai, whether as a primary or ancillary activity, involving virtual assets like cryptocurrencies or other digital tokens. Examples of VASPs in Dubai may include cryptocurrency exchange platforms, virtual asset custodians, virtual asset wallet providers, virtual asset brokers, or organisations involved in initial coin offerings (**ICOs**) or other forms of virtual asset issuances.

VASPs operating in Dubai are subject to regulation by VARA. The VARA was established and authorised by Law No. (4) of 2022 Regulating Virtual Assets in the Emirate of Dubai to regulate Virtual Assets and VASPs. VARA has the power to issue Rules, Directives and Guidance, and VASPs providing VA Activities in the Emirate will need to comply with applicable CBUAE federal regulations and/or guidance, including but not limited to as they pertain to specific Virtual Assets CBDCs and AED referenced fiat- referenced Virtual Assets.

VASPs will also be subject to regulations, rules and directives for a period of ten (10) years following the date that it is no longer regulated by VARA.

Are VASPs providing virtual asset services from offshore to persons in Dubai (UAE) subject to regulation in Dubai (UAE)?

VASPs operating from offshore are subject to regulation under Dubai's Virtual Assets and Related Activities Regulations 2023 if they provide services to individuals in Dubai. Regardless of their location, all VASPs must obtain a license from the Dubai VARA before offering virtual asset services to customers in the Emirate. This mandatory licensing requirement applies uniformly to both domestic and offshore providers. Offshore VASPs must also adhere to the same regulatory standards as those based within the UAE, including compliance with AML/CFT regulations, as well as other relevant laws designed to protect consumers and uphold market integrity.

The scope of services covered by VARA's regulations is broad and includes advisory services, custody services, trading and exchange services, lending and borrowing, as well as management and investment services. VARA maintains strict oversight of all licensed VASPs, conducting regular inspections and audits to ensure full compliance with applicable regulations. Additionally, the issuance and use of anonymity-enhanced cryptocurrencies are prohibited in Dubai, further reinforcing VARA's commitment to transparency in financial transactions. Offshore VASPs seeking to operate in Dubai must navigate a structured licensing process, which involves submitting comprehensive documentation about their business operations, financial health, and compliance frameworks. Failure to comply with VARA's regulations can result in significant penalties, including fines ranging from AED 20,000 to AED 200,000, as well as enforcement actions against non-compliant entities.

What are the main requirements for obtaining licensing / registration as a VASP in Dubai (UAE)?

To secure a license under the Virtual Assets Law, prospective applicants are mandated to establish Dubai as the hub for their operations. Additionally, they are required to obtain a commercial business license from the pertinent licensing authority in Dubai. The detailed procedures for obtaining this license and the accompanying ongoing obligations, such as those pertaining to anti-money laundering, disclosure, transparency, and know-your-client (**KYC**) processes, are explained in the regulations complementing the Virtual Assets Law.

The licensing regulations of Dubai are a consolidation of provisions derived from three essential sources: Cabinet Decision No. 111/2022, Cabinet Decision No. 112/2022, and the Virtual Assets and Related Activities Regulations 2023.

1. *Mandatory licensing requirements*: Cabinet Decision No. 111/2022: Mandates that entities engaging in Virtual Asset Activities in Dubai must acquire approval and licenses from the VARA. No transactions are permitted without proper licensing, except for specific assets designated for payment. Businesses must be based in the UAE and legally formed.
2. *Compliance and licensing process*: Cabinet Decision No. 111/2022 and Virtual Assets and Related Activities Regulations 2023: Entities seeking licenses are obliged to follow the detailed process as prescribed by VARA. Compliance with regulations, adherence to

directives, and meeting licensing conditions set by VARA is an integral part of the licensing process.

3. *Exemptions*: Virtual Assets and Related Activities Regulations 2023 allows exemptions from licensing regulations for the following:

   3.1 Lawyers, Accountants, and Business Consultants if their Virtual Assets Activities are incidental to their professional practice.

   3.2 Government entities in the UAE and their public, non-profit, not-for-profit, and charitable organisations are not required to obtain licenses.

   However, these exempt entities must obtain confirmation from VARA before engaging in any VA Activities.

4. *Mandatory registration for large proprietary traders*: Virtual Assets and Related Activities Regulations 2023 requires entities investing over $250 million in Virtual Assets within a 30-day period to register with VARA before investing or within three working days from the date of the investment volume. This mandatory registration acts as a regulatory measure for substantial proprietary trading in Virtual Assets.

5. *Voluntary registration for other market participants*: Virtual Assets and Related Activities Regulations 2023 offers voluntary registration for entities involved in specific business activities. This voluntary registration ensures transparency and compliance with VARA regulations.

6. *VARA's licensing powers*: Virtual Assets Service Providers must seek approval from VARA to engage in specific VA activities, with the license detailing the allowed actions and any associated limitations or time constraints. VARA has the authority to modify or revoke licenses, adjusting permitted activities or imposing restrictions based on various factors, including legal violations or financial instability. If a license is suspended, VARA communicates the duration to the VASP, during which the VASP cannot resume VA activities. Additionally, VARA can set extra requirements for entities applying for licenses or modifications, especially if they fail to meet conditions or breach laws.

7. *Licensing categories*: When applying for a VASP license, applicants must explicitly identify one or more virtual asset activities they intend to offer. These activities are categorised into seven options:

   7.1 VA Advisory Services,

   7.2 VA Broker-Dealer Services,

   7.3 VA Custody Services,

   7.4 VA Exchange Services,

   7.5 VA Lending and Borrowing Services,

   7.6 VA Management and Investment Services, and

   7.7 VA Transfer and Settlement Services.

8. *Obtaining VASP license*: Firms intending to provide virtual asset services in or from Dubai must obtain a VASP license from Dubai Economy and Tourism (**DET**) or any Dubai Free Zone Authority (**FZA**) in Dubai, excluding the DIFC. This license is mandatory and serves as a prerequisite for conducting virtual asset services in Dubai.
9. *Validity and Renewal*: Once obtained, a VASP license is valid for a period of one year and must be renewed annually. The application and renewal process include the payment of an annual supervision fee to ensure ongoing compliance with regulatory standards.
10. *License Application Process*:
    10.1 For Existing VASPs: Existing VASPs in Dubai were initially required to submit their VASP license applications by the initial deadline of August 31, 2023. However, VARA extended this deadline to November 17, 2023. Failure by existing VASPs to submit their applications before this deadline may trigger regulatory enforcement consequences from VARA.
    10.2 For New VASPs (Two-Stage Process):

    Stage 1: Initial Approval In this stage, VASPs submit an Initial Disclosure Questionnaire (**IDQ**) to DET or a relevant FZA. They also provide additional documentation, including a business plan and details of beneficial owners and senior management. Furthermore, the payment of initial fees is required, leading to the receipt of Initial Approval to finalise legal incorporation and complete operational setup.

    Stage 2: VASP License Following the Initial Approval, VASPs proceed to Stage 2 by preparing and submitting documentation as per VARA's guidance. This stage involves receiving feedback directly from VARA, participating in potential meetings and interviews, paying the remaining portion of application fees, and first-year supervision fees. The result is the issuance of a VASP license, possibly subject to operational conditions.
11. *Post-License Obligations*: Upon obtaining a VASP license, firms are obligated to continuously meet general licensing conditions and comply with all relevant Regulations, Rules, and Directives that may evolve over time. The specific corporate governance and legal structure requirements for VASPs are set out in the VARA Company Rulebook and depend on the business operations conducted.

Licensing Fees

Regulated Activity	License Application Fee (for one regulated activity only)	License Extension Fee (for each additional regulated activity)	Annual Supervision Fee (for each regulated activity)
Advisory Services	AED 40,000	50% of lower license application fee(s)	AED 80,000
Broker-Dealer Services	AED 100,000	50% of lower license application fee(s)	AED 200,000
Custody Services	AED 100,000	50% of lower license application fee(s)	AED 200,000
Exchange Services	AED 100,000	50% of lower license application fee(s)	AED 200,000
Lending and Borrowing Services	AED 100,000	50% of lower license application fee(s)	AED 200,000
Payments and Remittances Services	AED 40,000	50% of lower license application fee(s)	AED 80,000
VA Management and Investment Services	AED 100,000	50% of lower license application fee(s)	AED 200,000

1. Following the submission of the application, the licensing process typically takes between 4 to 6 months to acquire the license.
2. VASPs that wish to change their VARA license details will be charged an AED 500 fee for each modification request.
3. VASPs intending to cease operations in Dubai and close down their virtual asset activities will face a withdrawal fee of AED 10,000.

Regulatory Requirements

Aspect	Requirements
Corporate Governance for VASP License Application	• Board of Directors: Minimum of two members, with at least two residing in the UAE. • Responsible Officers: At least two overseeing compliances. • Compliance Officer/MLRO: Can be a foreign national. • Company Secretary: Required for company incorporation.
Capital Requirements and Asset Maintenance	• Specific capital requirements based on activities and overhead costs (AED 100,000 to AED 1,500,000). • Maintain liquid assets surpassing 1.2 times monthly expenses. • Hold reserve assets equal to 100% of client liabilities, in the same virtual asset.
AML/CFT Compliance	• VARA oversees AML/CFT regulations for all VASPs and Virtual Asset Activities in Dubai. • Ensures compliance with federal AML/CFT laws in the Emirate.
Marketing Regulations	• All market participants must comply with regulations for marketing, advertising, and promotional activities, irrespective of holding a VARA license.

What are the main ongoing requirements for VASPs regulated in Dubai (UAE)?

The Virtual Assets Issuance Rulebook, which governs virtual asset activities in Dubai, explains several ongoing requirements for VASPs regulated in Dubai, apart from licensing requirements. These include:

1. *Compliance and risk management obligations*: VASPs must have effective systems and processes in place for identifying, assessing, managing, and mitigating risks associated

with virtual asset activities, including, but not limited to AML/CFT risks. VASPs must also have a compliance program that ensures adherence to all relevant laws and regulations.

2. *Technology and security obligations*: VASPs must have effective technology and security measures in place to safeguard against unauthorised access or use of virtual assets and ensure systems are functional and have appropriate disaster recovery processes.
3. *AML/CFT obligations*: VASPs must have systems and processes in place for identifying, assessing, managing and mitigating AML/CFT risks, including implementing policies and procedures for customer due diligence, screening, and on-going monitoring, reporting suspicious activities to authorities promptly.
4. *Marketing and consumer protection obligations*: VASPs must ensure that their marketing practices are fair, clear, and not misleading to consumers. All marketing materials should allow consumers to make informed decisions about virtual asset investments. Marketing communications must clearly identify promotional content using terms such as "ad," "advertisement," or "sponsored content" prominently to avoid any confusion. Additionally, VASPs are required to provide clear risk statements to customers before engaging in any virtual asset transactions, outlining the potential risks associated with the investment. Any monetary or non-monetary incentives offered must be clearly communicated in a way that does not mislead consumers or create unrealistic expectations about potential returns. For event marketing, entities not licensed by VARA may still engage in marketing activities at physical events held in Dubai, provided they adhere to strict guidelines, including the requirement to include clear disclaimers stating they are not licensed by VARA. Furthermore, all customer complaints should be handled fairly and efficiently to uphold a high standard of consumer protection.
5. *Record-Keeping Obligations*: VASPs are required to maintain accurate records of all transactions, company books, and other relevant documents for a minimum of five years. These records must be readily accessible for inspection by regulatory authorities to ensure compliance with the regulations. Proper record-keeping is a fundamental obligation for VASPs, allowing for transparency and accountability in their operations.
6. *Adherence to Rulebooks*: In addition to complying with the main regulatory framework, VASPs are required to adhere to several specific rulebooks issued by VARA. The Company Rulebook governs corporate governance and internal control systems, ensuring that VASPs have sound management structures in place. The Compliance and Risk Management Rulebook outlines the need for effective compliance systems, internal audits, and procedures to manage risk. The Technology and Information Rulebook establishes requirements for technology governance, including cybersecurity measures and data protection compliance, ensuring the secure handling of virtual asset transactions and sensitive information. Additionally, the Market Conduct Rulebook provides guidelines for marketing practices and interactions with consumers, ensuring that VASPs operate ethically and transparently.
7. *Regular Audits and Inspections*: VARA conducts regular audits and inspections to assess VASPs' compliance with the ongoing regulatory requirements. These audits are

essential for ensuring that VASPs adhere to the established standards and maintain proper operational practices. Non-compliance with the regulations can result in penalties ranging from AED 20,000 to AED 200,000, depending on the severity of the breach. Regular inspections help maintain the integrity of the virtual asset market and protect consumer interests by ensuring that VASPs operate within the regulatory framework.

It is important to note that these requirements may be updated from time to time, and VASPs must always be kept up-to-date with any changes in the regulations and guidelines concerning virtual assets in Dubai.

What are the main restrictions on VASPs in Dubai (UAE)?

The Virtual Assets and Related Activities Regulations 2023 in Dubai impose specific restrictions and obligations on VASPs to ensure compliance with the law. Key Provisions are as follows:

1. *General prohibition*: VASPs are restricted from engaging in Regulated VA Activities unless officially authorised by VARA.
2. *Compliance rules*: VASPs must adhere to regulations governing virtual asset issuance and related activities, including the proper classification of virtual assets.
3. *Licensing requirements*: VARA mandates VASPs to comply with licensing requirements outlined in the regulations, providing VARA with the authority to issue licenses and authorisations.
4. *Supervisory authority*: VARA is granted supervisory powers over VASPs, particularly focused on preventing money laundering and combating terrorism financing in accordance with AML/CFT obligations.
5. *Power to classify*: VARA has the authority to classify virtual assets, including the ability to designate certain assets as prohibited virtual assets. This classification restricts VASPs from engaging in activities involving these specified assets.
6. *Enforcement of prohibition*: Emphasising the general prohibition, VASPs are explicitly barred from participating in regulated VA activities unless duly authorised by VARA.

What is the main information that regulated virtual asset trading platforms have to make available to its customers?

Under Administrative Order No. (01) of 2022 and Administrative Order No. (02) of 2022, the VARA has established specific provisions that require virtual asset trading platforms to provide essential information to their customers. These requirements have been updated to enhance consumer protection in light of recent regulatory changes effective October 1, 2024. The main information that regulated virtual asset trading platforms must make available includes:

1. clear disclosure of the risks associated with virtual assets, including market volatility, liquidity risks, and potential loss of capital;

2. comprehensive details regarding the terms and conditions of the platform's services, including any fees, charges, and expenses related to transactions;
3. detailed procedures for making payments through the platform, including accepted payment methods and any associated costs;
4. clear instructions on how customers can buy, sell, or exchange virtual assets on the platform, including any limitations or requirements;
5. information on how customers can file complaints and the processes for resolving disputes effectively and efficiently;
6. as per the updated marketing regulations effective October 1, 2024, platforms must ensure that all marketing communications are accurate and not misleading. This includes providing risk disclosure statements before transactions and ensuring that promotional content is clearly identified as such;
7. any monetary or non-monetary incentives offered must be clearly communicated without creating urgency or misleading investors. These incentives should not overshadow risk disclosures and must be presented alongside any ongoing charges;
8. required disclaimers in marketing materials must be prominently displayed in a manner that is easily seen and legible across all devices;
9. any other information deemed necessary by VARA or the trading platform to help customers make informed decisions about using the platform; and
10. platforms should provide access to VARA's newly issued Marketing Guidance Document, which outlines best practices for compliant marketing activities within the virtual asset sector.

What market misconduct legislation/regulations apply to virtual assets?

Market misconduct refers to any actions that can influence the market value of virtual assets, such as insider dealing, unlawful disclosure, or market manipulation. The Virtual Assets and Related Activities Regulations 2023, Regulations on the Marketing of Virtual Assets and Related Activities 2024 and Marketing and Promotions Guidelines 2024 set out provisions to prevent and detect market misconduct in virtual asset trading.

VARA has the power to conduct investigations, examinations, and impose fines and penalties related to market misconduct. Any entity found guilty of engaging in or attempting to engage in market misconduct in Dubai, will face severe penalties under the regulations.

Examples of market misconduct offenses and penalties include:

1. *Insider dealing*: This occurs when someone having access to sufficient inside information about a security or stock deals in that security illegally to make a profit or avoid losses. The penalty for insider dealing in Dubai is a minimum sentence of two years and a maximum sentence of five years imprisonment, or a fine of at least AED 500,000 and not more than AED 5,000,000 or both.

2. *Unlawful disclosure*: This occurs when someone without lawful authority, discloses non-public information about a listed company or virtual asset. The penalty for unlawful disclosure in Dubai is a minimum sentence of one year and a maximum sentence of three years imprisonment, or a fine of at least AED 200,000 and not more than AED 3,000,000 or both.
3. *Market manipulation*: This occurs when someone controls or affects market behavior of virtual assets, stock, security to derive benefits illegally. The penalty for market manipulation in Dubai is a minimum sentence of two years and a maximum sentence of ten years imprisonment, or a fine of at least AED 1,000,000 and not more than AED 10,000,000 or both.

In addition to the above penalties, VARA may also impose fines, revoke a company's license to trade virtual assets, or publicly name and shame the offending entity. It is worth noting that penalties may change, depending on the severity of the misconduct and its impact on the market. Moreover, the regulations empower VARA to act against market misconduct using its powers to investigate, or direct responsible individuals or licensed VASP to take remedial actions.

Furthermore, as part of its ongoing efforts to enhance regulatory oversight in the virtual asset sector, the Dubai VARA introduced new marketing regulations under the Regulations on the Marketing of Virtual Assets and Related Activities 2024 and Marketing and Promotions Guidelines 2024, effective from October 1, 2024. These regulations aim to ensure ethical marketing practices. One of the key elements of the updated framework is the broad definition of marketing, which encompasses all forms of advertisement and promotional content related to virtual assets. This applies to both traditional and digital platforms, ensuring that any communication promoting virtual assets falls under regulatory scrutiny.

VARA mandates that all marketing materials must be clear, accurate, and truthful, preventing any misleading information about virtual assets. Companies are required to ensure that the benefits, risks, and legal status of virtual assets are not misrepresented in their promotional efforts. A significant aspect of the regulations is the requirement for prominent disclaimers. Disclaimers regarding the risks associated with virtual assets must be clearly visible and easily understandable across all platforms, highlighting market volatility, regulatory uncertainties, and potential investment losses.

Additionally, the regulations address the disclosure of incentives. If marketers offer monetary or non-monetary incentives for promoting virtual assets, they must disclose these incentives responsibly, alongside risk warnings. This ensures that incentives do not overshadow the inherent risks involved in virtual asset investments. VARA's enforcement measures include strict penalties for non-compliance, ranging from fines to the suspension of marketing activities within Dubai's virtual asset market.

4. Regulation of other crypto-related activities in Dubai (UAE)

Are managers of crypto funds regulated in Dubai (UAE)?

According to Part IV of the Virtual Assets and Related Activities Regulations 2023, any virtual asset service provider that intends to carry out VA activities is required to obtain authorisation from the VARA and obtain the appropriate license. This includes managers of crypto funds.

The licensing requirements include necessary documentation such as the application form, protocol on corporate governance, measures for identifying, preventing, and managing conflicts of interest, business plan, financial statements and any other information deemed relevant by VARA. These requirements may be different depending on the type of VA activities the manager intends to engage in such as management of funds.

VARA also has the power to grant licenses on conditions that it deems appropriate. These conditions may be adjusted over time depending on future circumstances. Additionally, VARA may revoke licenses at any time on various grounds such as non-compliance with the Virtual Assets and Related Activities Regulations or rules and directives issued by VARA. Such decisions are subject to an appeals process.

It is important to note that all VASPs, including managers of crypto funds, are subject to the same AML and CFT obligations and regulations as traditional financial businesses.

Are distributors of virtual asset funds regulated in Dubai (UAE)?

Distributors of virtual asset funds are regulated in Dubai. According to the Virtual Assets and Related Activities Regulations 2023, any person or entity who intends to carry out any virtual asset-related activity in or from Dubai, including the distribution of virtual asset funds, must be authorised by the VARA.

Such distributors must obtain the appropriate license from VARA and comply with all the relevant regulations and rules. Furthermore, VARA may revoke or suspend licenses at any time for non-compliance with the regulations, rules, and directives issued by VARA.

AML/CFT Obligations of VASPs, provides general AML/CFT requirements applicable to all Virtual Asset Service Providers, including those who distribute virtual asset funds. The regulations specify the requirements for Customer Due Diligence (**CDD**), Enhanced Due Diligence (**EDD**), record-keeping, and reporting.

Additionally, Marketing, Advertising or Promotion, sets out the regulations for marketing virtual asset funds. It specifies that any marketing material aimed at retail investors should disclose clear and concise information about the risks involved.

Moreover, if a virtual asset fund distributor offers advisory services for virtual assets, they would be required to comply with the Advisory Services Rulebook. Similarly, if they offer custody services for virtual assets, they would need to comply with the Custody Services Rulebook. Each VA Activity Rulebook specifies the requirements that VASPs need to comply with when offering that particular VA Activity.

Therefore, distributors of virtual asset funds are required to comply with all the relevant regulations and rules, including obtaining the appropriate license from the VARA, complying with the AML/CFT obligations, and adhering to the marketing regulations.

Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Dubai (UAE)?

In Dubai, intermediaries engaging in virtual asset-related activities must adhere to the Virtual Assets and Related Activities Regulations 2023 and the Exchange Services Rulebook issued by the Dubai VARA. The regulations mandate licensing, compliance with specific rulebooks, and adherence to anti-money laundering and counter-financing of terrorism requirements. The Exchange Services Rulebook outlines obligations related to board governance, remuneration reporting, internal policies, public disclosures, code of conduct, market surveillance, and prudential requirements for margin trading.

1. *Virtual Assets and Related Activities Regulations 2023*:
    - 1.1 *Licensing Requirement*: Intermediaries intending to engage in virtual asset-related activities, including trading and advisory services, must secure a license from the VARA under the Virtual Assets and Related Activities Regulations 2023.
    - 1.2 *Compliance with VA Activity Rulebooks*: For trading activities, intermediaries must adhere to the VA Activity Rulebook for Exchange Services, and for advisory services, compliance with the VA Activity Rulebook for Advisory Services is mandatory. These rulebooks detail specific requirements and standards for each type of activity.
    - 1.3 *AML/CFT Requirements*: Intermediaries are obligated to follow AML and CFT requirements explained in Regulation VI of the Virtual Assets and Related Activities Regulations 2023. This includes conducting thorough customer due diligence, monitoring transactions for suspicious activities, and maintaining proper record-keeping.
2. *Exchange Services Rulebook*: Intermediaries must comply with the Exchange Services Rulebook, which outlines specific guidelines for trading venues, settlement, delivery, clearing, and measures for prohibiting, detecting, preventing, and deterring market offenses and abusive practices.
    - 2.1 *Board Governance*: The Exchange Services Rulebook emphasises the importance of appropriate board composition and committees for good governance within VASPs. This ensures effective oversight and management of virtual asset exchange activities.
    - 2.2 *Board Remuneration Reporting*: VASPs must implement board remuneration reporting requirements, aligning with relevant laws and regulations in Dubai. This involves transparent reporting of board members' remuneration, contributing to accountability and disclosure.

2.3 *Internal Policies and Procedures*: Intermediaries providing exchange services must establish, implement, and enforce written internal policies and procedures. These cover various aspects, including the prohibition, detection, prevention, and deterrence of market offenses, settlement, delivery and clearing processes, fees, and margin trading rules.

2.4 *Public Disclosures*: VASPs offering exchange services are required to publish specific information about each virtual asset on their website. This includes details such as the virtual asset's name, symbol, issuance date, market capitalisation, fully diluted value, circulating supply, and whether it has undergone an independent smart contract audit.

2.5 *Code of Conduct*: VASPs must develop and enforce a code of conduct or other rules governing the behavior of all participants on their trading venue. This ensures fair and ethical practices among individuals interacting within the virtual asset exchange ecosystem.

2.6 *Market Surveillance*: Policies and procedures for market surveillance are crucial for VASPs. These include mechanisms to detect and prevent market abuse, with an obligation to notify VARA in cases where potential abuse affecting the market is suspected.

2.7 *Prudential Requirements for Margin Trading*: When providing Margin Trading services, VASPs must adhere to prudential requirements, initial margin, and maintenance margin. These measures contribute to the stability and integrity of margin trading activities.

2.8 *Margin Trading Agreement*: The Margin Trading Agreement between the VASP and the client must encompass essential elements. This includes responsibilities, termination rights, the effect of termination, applicable dispute resolution mechanisms, and the VASP's obligation to provide early warning notifications to the client. This agreement ensures clarity and protection for both parties involved in margin trading.

5. Other relevant regulatory information

Are there any upcoming regulatory developments in respect of crypto-related activity in Dubai (UAE)?

As part of its ongoing efforts to manage the evolving landscape of digital assets, VARA is preparing to introduce several key regulatory updates. One of the most notable is the introduction of enhanced marketing and promotion regulations, which took effect on October 1, 2024. These new rules require that all marketing materials related to virtual assets be transparent, accurate, and not misleading. They also mandate that risk disclaimers must be prominently displayed, and any incentives offered in promotional campaigns must be clearly disclosed. This regulation is aimed at protecting consumers from

the increasing risks associated with virtual asset investments and ensuring ethical marketing practices.

VARA is also focusing on regulating NFTs, especially as they become more integrated into the Metaverse. Upcoming regulations will address security and compliance concerns surrounding NFTs, particularly in relation to cross-border transactions and the growing threat of cybercrime. Stricter KYC protocols are expected to be introduced for NFT platforms to ensure that user identities are properly verified. Additionally, AML/CFT measures will be strengthened to mitigate the risks associated with the blockchain-based transactions, which can be exploited for illicit activities such as money laundering.

VARA is also tightening its licensing requirements for all firms involved in crypto-related activities. Unauthorised and unlicensed entities will be prohibited from operating within Dubai's virtual asset market, with stricter enforcement of these rules already underway. VARA has taken action by issuing cease-and-desist orders and imposing fines on companies that fail to comply with licensing requirements.

In response to the global nature of the digital asset market, VARA is also working to align its regulatory framework with international standards, particularly in managing cross-border NFT transactions. This is essential as NFTs and other digital assets are frequently traded across jurisdictions with varying regulatory frameworks.

Has there been any notable events in Dubai (UAE) that has prompted regulatory change recently?

Recent events in Dubai have led to significant regulatory changes in the crypto sector. One of the most notable actions has been the VARA cracking down on unauthorised firms operating in the crypto market. This crackdown is aimed at ensuring that all VASPs comply with the required licensing and marketing regulations.

In October 2024, VARA took enforcement actions by issuing cease-and-desist orders and fining seven companies for operating without the necessary licenses. These fines ranged from AED 50,000 to AED 100,000 per company, depending on the severity of the violations. VARA emphasised that only licensed entities are allowed to offer virtual asset services in or from Dubai and warned the public about the risks of dealing with unlicensed firms.

On September 9, 2024, VARA, in collaboration with the SCA, introduced a new supervisory framework for virtual asset firms. This new framework aims to provide greater regulatory consistency across the UAE, allowing virtual asset firms to obtain a VARA license that also automatically grants them registration with the SCA. This change is expected to streamline operations for crypto firms and enhance their ability to serve clients throughout the UAE.

Additionally, VARA introduced updated marketing regulations, effective from October 1, 2024, designed to improve transparency and consumer protection in the marketing of virtual assets. These regulations require that all marketing materials be fair and not misleading, with a strong emphasis on clearly communicating the risks associated with investing in cryptocurrencies.

Furthermore, On October 14, 2024, AED Stablecoin LLC received in-principal approval from the Central Bank of the UAE to launch AE Coin, the first dirham-backed stablecoin in the UAE.

This approval aligns with the country's Digital Government Strategy 2025 and the Payment Token Services Regulation established earlier in June 2024. AE Coin is designed to combine the stability of the UAE dirham with the efficiency of blockchain technology, enabling secure and low-cost transactions for both individuals and businesses.

Also, the UAE's Ras Al Khaimah Digital Assets Oasis (RAK DAO) is set to introduce a legal framework for decentralized autonomous organizations (DAOs) on October 25, 2024, during the DAO Legal Clinic event. This framework is designed to empower DAOs, including smaller entities, to operate legally within the UAE by clarifying governance and compliance expectations. Key features of the framework include remote registration, allowing DAOs to register without a physical presence in the UAE, which will attract global participation. Additionally, the framework will provide a legal identity for DAOs and protection from individual liabilities for founders and members. It will also permit DAOs to own both on-chain and off-chain assets while clarifying tax obligations and benefits. Furthermore, procedures for handling internal and external conflicts will be established, enabling DAOs to undertake legally enforceable obligations.

6. Pending litigation and judgments related to virtual assets in Dubai (UAE) (if any)

Dubai Appeals Court Case No. 27/2024: In this important ruling, the Dubai Appeals Court supported a previous decision that awarded damages in a cryptocurrency fraud case. The plaintiff claimed that AED 200,000 meant for cryptocurrency transactions was stolen by the defendant, who already faced criminal charges for this act. The court recognised cryptocurrency as property, meaning that digital assets have ownership rights and can be protected by current laws.

Dubai Court of First Instance Case No. 1739 of 2024: This case created a new legal rule about employee pay in digital assets. The court decided that employees can receive their salaries in digital currencies, specifically EcoWatt tokens, as mentioned in their job contracts. This ruling reversed an earlier decision that didn't allow payments in digital currency because of concerns about its value.

VARA's Crackdown on Unlicensed firms: The VARA has been actively pursuing unlicensed firms operating in Dubai's virtual asset ecosystem. Recently, VARA issued cease-and-desist orders and imposed fines ranging from AED 50,000 to AED 100,000 on seven entities for operating without the required licenses and violating marketing regulations. These enforcement actions are part of VARA's broader initiative to ensure compliance and protect consumers from potential risks associated with unregulated activities in the cryptocurrency market.

7. Government outlook on virtual assets and crypto-related activities in Dubai (UAE)

Dubai established the VARA in March 2022, enacting the Virtual Assets Law for regulatory oversight of virtual assets, NFTs, and virtual asset service providers. The DWTC Authority

collaborates with VARA to streamline regulatory processes. The UAE Central Bank launched the 'Digital Dirham' strategy in March 2023, focusing on cross-border transactions and exploring Central Bank Digital Currency issuance for wholesale and retail applications.

Dubai Law No. 4 of 2022 provides the foundation for VARA's authority. Regulatory bodies like the SCA advise caution in dealing with crypto-related financial products, aligning with the government's commitment to investor protection. On September 9, 2024, the SCA and VARA formalised a significant agreement to streamline the licensing process of VASPs in the UAE. Under this agreement, VASPs operating in or from Dubai will be licensed by VARA and automatically registered with the SCA for operations across the UAE. This regulatory alignment aims to enhance oversight and facilitate a unified approach to managing virtual assets.

The VAL law outlines specific requirements for VASPs, including licensing, compliance with AML regulations, and adherence to KYC protocols. VARA's regulations are designed to protect investors while promoting transparency and accountability in the market. As of 2024, VARA has issued licenses to over 30 VASPs, showcasing its commitment to fostering a regulated environment for cryptocurrency activities.

VARA has implemented strict compliance measures, requiring VASPs to undergo rigorous evaluations before receiving operational licenses. This includes ongoing monitoring to ensure that licensed entities adhere to AML and KYC standards. In recent months, VARA has increased its enforcement actions, imposing fines on unlicensed firms and emphasising that unauthorised promotion of virtual assets will not be tolerated.

The UAE government is also focused on leveraging blockchain technology as part of its broader economic strategy. The Emirates Blockchain Strategy 2021 aims for 50% of all government transactions to occur via blockchain by 2025. This initiative not only enhances operational efficiency but also positions Dubai as a leader in digital transformation, attracting global talent and investment in blockchain and cryptocurrency sectors.

8. Advantages of setting up a VASP in Dubai (UAE)

Establishing a VASP in Dubai presents numerous advantages, particularly following the introduction of the VAL and the establishment of the Dubai VARA. This regulatory body is responsible for overseeing all virtual asset activities within Dubai, except for the DIFC, which has its own regulatory framework. VARA's regulations encompass a comprehensive range of activities, including exchange services, token trading, and platform services, providing a structured environment for VASPs to operate. One key benefit of setting up a VASP in Dubai is the regulatory clarity offered by VARA. The framework includes 13 specific rulebooks, five of which are mandatory for all VASPs. These cover essential areas such as compliance and risk management, technology standards, and market conduct.

Dubai's various free zones, such as the DMCC and the DWTC, offer additional incentives for VASPs. These zones provide tailored regulatory frameworks that facilitate investment in crypto assets and tokens. By operating within these zones, businesses can benefit from

streamlined processes and potential tax advantages, making it easier to attract both local and international investments.

Furthermore, VARA's commitment to creating a responsible regulatory environment is evident in its focus on AML measures and investor protection. The authority requires VASPs to comply with strict AML standards and maintain transparency in their operations. Moreover, the 2023 Regulations of Virtual Assets aim to establish Dubai as a hub for digital assets, promoting innovation while ensuring that businesses operate within a secure framework. The recent issuance of multiple licenses by VARA indicates a rapidly expanding market, providing VASPs with opportunities to establish themselves in a thriving digital economy.

October 2024

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Qatar

In recent years, Qatar has taken cautious yet progressive steps to regulate the digital asset sector. While the country initially maintained a conservative stance, as reflected in its 2019 prohibition of virtual asset services, the introduction of the QFC Digital Asset Regulations on 1st September, 2024 marked a more innovative phase.

This new framework aims to support innovation while ensuring the financial system stays stable and safe for investors. By focusing on tokenised assets and keeping strict rules on volatile cryptocurrencies, Qatar is creating a system that aligns with its broader Third Financial Sector Strategic Plan, which seeks to enhance the country's financial services sector and promote economic diversification in line with the Qatar National Vision 2030.

Background: The QFCRA's 2019 Alert on Virtual Assets in Qatar

On 26th December, 2019, the Qatar Financial Centre Regulatory Authority (**QFCRA**) issued a strict alert banning virtual asset services within the Qatar Financial Centre (**QFC**). The alert defined virtual assets as digital substitutes for currency that can be used for trading, transfer, or payment purposes but excluded fiat currencies from this definition. The prohibited activities included exchanging virtual assets for fiat currencies, transferring and safekeeping virtual assets, and offering financial services related to virtual asset issuances. However, digital securities and other financial instruments regulated by authorities like the Qatar Central Bank or the Qatar Financial Markets Authority were explicitly excluded from the restrictions.

Qatar's 2024 Digital Assets Framework

On 1st September, 2024, Qatar launched its Digital Assets Framework as part of its Third Financial Sector Strategic Plan. This framework, which includes the Qatar's Digital Asset Regulations 2024, Qatar's Investment Token Rules 2024, and the Qatar's Investment Token (Miscellaneous Amendments) Rules, lays out the rules for digital assets in the QFC. It defines

different types of tokens, the rules for tokenisation, the legal assumptions of ownership, and licensing requirements for companies dealing with digital assets.

The Qatar's Digital Asset Regulations 2024 provide a clear classification of tokens. The regulations define "Permitted Tokens" as digital representations tied to verified rights, meaning they have a basis in real-world assets or legal rights. This framework also defines "Excluded Tokens," which include cryptocurrencies, stablecoins, and central bank digital currencies (**CBDCs**), classifying them as substitutes for currency and excluding them from Qatar's digital asset regulatory framework. This exclusion reflects Qatar's cautious stance on cryptocurrencies, keeping them separate from other digital assets to avoid market risks associated with speculation and instability.

To create a permitted token under the Qatar Digital Assets Regulations, involves a structured process of tokenisation. This includes three key steps. First, Validation, where a validator issues a certificate verifying the ownership of the asset to be tokenised. Secondly Request for Tokenisation, where the asset owner formally requests the creation of a token representing the asset. Finally, Token Generation, where a licensed token generator creates the token on a specific digital infrastructure, allowing the owner or custodian to control it. These steps ensure that tokens are securely tied to real-world assets or rights, preventing unauthorised or speculative use. Additionally, the regulations presume that the person who controls a token's transferability is its owner unless proven otherwise in the QFC courts.

A key feature of the Qatar's framework is regulatory exclusivity. Within the QFC, digital asset activities are governed separately from the broader Qatari law, allowing for a specialised regulatory environment similar to models seen in Dubai's DIFC and Abu Dhabi's ADGM. This approach is aimed at encouraging innovation in digital finance while providing a stable and clear legal structure for companies operating within the QFC. To ensure market security, entities that want to engage in digital asset activities such as token generation, custody, or exchange must obtain licenses from the QFC. They are also required to implement strong operational systems to avoid conflicts of interest, which is in line with international best practices, such as the standards set by the European Markets in Crypto-Assets (**MiCA**) regulation.

The Qatar's Investment Token Rules 2024 add further specifics, focusing on tokens representing rights in financial products or assets, classifying these as financial instruments. These rules integrate existing frameworks related to anti-money laundering (**AML**), customer protection, and investment management, setting standards for transparency in disclosures, advertisements, and custody of investment tokens. Regulated activities under these rules include operating exchanges for investment tokens and providing custody services, ensuring that companies dealing in investment tokens maintain a high standard of security and consumer protection.

Despite the detailed structure, cryptocurrencies, stablecoins, and other currency substitutes remain excluded, continuing the cautious stance outlined in the QFCRA's 2019 alert. The decision to exclude these assets aligns with Qatar's focus on financial stability and conservative risk management.

Qatar's Digital Assets Approach Compared to Neighbours in the Middle East

In contrast to countries like the UAE and Bahrain, which have adopted more open policies towards cryptocurrencies, Qatar's approach reflects cautious and controlled innovation. The regulatory framework prioritises financial stability and investor protection, emphasising tokenisation of real-world assets such as real estate and sukuk, rather than embracing cryptocurrencies. Qatar's emphasis on creating a distinct, highly regulated environment within the QFC mirrors models like Dubai's DIFC and Abu Dhabi's ADGM, where regulatory clarity is prioritised without risking market volatility.

The UAE has established comprehensive frameworks through the Abu Dhabi Global Market (**ADGM**) and Dubai's Virtual Asset Regulatory Authority (**VARA**), regulating a wide range of digital assets including cryptocurrencies, stablecoins, and NFTs. The UAE's open regulatory environment contrasts with Qatar's more conservative stance, which excludes more speculative digital assets to minimise risk.

Bahrain's Central Bank Digital Assets Framework also openly regulates cryptocurrencies, permitting exchanges to operate under clear licensing protocols. Bahrain emphasises consumer protection and market integrity but is still open to a wider range of digital assets, unlike Qatar's framework, which restricts itself to asset-backed tokens.

Furthermore, Saudi Arabia has taken a more conservative approach, focusing on blockchain technology for business applications rather than regulating cryptocurrencies directly. Although the Saudi Arabian Monetary Authority (**SAMA**) has not issued specific cryptocurrency regulations, it is actively exploring the development of central bank digital currencies (**CBDCs**).

Strengths and Challenges of Qatar's Digital Assets Approach

By excluding more speculative assets, Qatar reduces the potential for market volatility, aligning with global AML and CFT guidelines, such as those from the Financial Action Task Force (**FATF**). Additionally, the QFC's specialised regulatory zone offers flexibility and autonomy, allowing Qatar to explore innovation within a controlled environment. The focus on asset tokenisation (such as real estate and sukuk) aligns well with the country's economic diversification goals under Qatar National Vision 2030. This emphasis on real-world use cases seeks to ensure that digital asset innovation is directed towards stable and productive sectors, reducing risk while supporting Qatar's long-term economic strategy.

However, there are limitations inherent in Qatar's cautious approach. The exclusion of cryptocurrencies and stablecoins limits Qatar's appeal to global crypto companies, which may view the regulatory stance as overly restrictive compared to the more open environments in the UAE and Bahrain. By upholding its 2019 stance that cryptocurrencies are "unsuitable", Qatar can appear somewhat out of step with global trends where cryptocurrencies are increasingly recognised as legitimate digital assets. Additionally, Qatar's focus on tokenised assets may miss opportunities in areas like decentralised finance (**DeFi**) and Web3, which could be key to the digital economy's future growth.

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Afterword

Photo by Roger Brown: https://www.pexels.com/photo/various-cryptocurrency-on-table-5126268/

The landscape of virtual assets has undergone significant transformations in 2025, marked by substantial legislative, regulatory, and technical developments globally, with a pronounced focus on the United States. These changes have been driven by the increasing integration of digital assets into mainstream financial systems, prompting governments and regulatory bodies worldwide to establish frameworks that balance innovation with consumer protection and financial stability.

Legislative Developments

Global Landscape

Internationally, jurisdictions have been proactive in formulating regulations to accommodate the burgeoning digital asset sector. For instance, Hong Kong's Securities and Futures Commission (SFC) introduced the "A-S-P-I-Re" roadmap, encompassing 12 initiatives designed to enhance market access, safeguards, product diversity, infrastructure, and international relationships within the virtual asset ecosystem. This strategic framework underscores Hong Kong's commitment to becoming a leading hub for virtual assets.

Similarly, the European Union has been advancing its Markets in Crypto-Assets (MiCA) regulation, aiming to establish a harmonized regulatory framework across member states. MiCA seeks to regulate crypto-assets not covered by existing financial services legislation.

Mauritius

In February 2025, the Bank of Mauritius issued the "Guideline for Virtual Asset related Activities," providing a comprehensive framework for the regulation and supervision of virtual asset service providers (VASPs) and issuers of initial token offerings (ITOs). The

guideline aims to ensure financial stability and consumer protection within the virtual asset ecosystem.

Seychelles

The Seychelles enacted the Virtual Asset Service Providers Act, 2024 (VASP Act), which came into force on 1 September 2024. This legislation establishes a licensing regime for VASPs and introduces measures to prevent money laundering and terrorist financing. The Financial Services Authority (FSA) is responsible for regulating services pertaining to virtual assets under this Act.

Hong Kong

In addition to the SFC's "A-S-P-I-Re" regulatory roadmap referred to above, on 6 December 2024, the Hong Kong government introduced a Stablecoins Bill, which is expected to be enacted within 2025 to establish a legal and regulatory framework for issuers of fiat currency-referenced stablecoins in Hong Kong.

Singapore

Singapore's Monetary Authority conducted a Virtual Assets Risk Assessment (VA RA) in late 2024, providing a targeted review of money laundering, terrorism financing, and proliferation financing risks associated with virtual assets. The assessment approach is in line with Singapore's risk-based regulatory approach, aiming to balance innovation with financial integrity.

Antigua and Barbuda

Antigua and Barbuda have embraced cryptocurrency and blockchain technology, with Prime Minister Gaston Browne expressing readiness to adopt digital assets amid shifting U.S. policies. The jurisdiction aims to implement regulatory safeguards to ensure consumer protection and financial stability.

The Bahamas

The Bahamas released a policy white paper titled "The Future of Digital Assets in The Bahamas," outlining a vision and framework to guide digital asset policy through 2026. The document reflects the nation's ambition to become a leading digital asset hub in the Caribbean, emphasizing progressive regulation and innovation.

Bermuda

Bermuda's Digital Asset Business Act 2018 (DABA) serves as the statutory basis for regulating digital asset businesses. The Bermuda Monetary Authority (BMA) offers three classes of licences, facilitating a structured approach to overseeing digital asset activities.

British Virgin Islands (BVI)

The Virtual Assets Service Providers Act, 2022 (VASP Act), effective from 1 February 2023, establishes a legal framework for the registration and supervision of VASPs in the BVI. Entities providing virtual asset services are required to register with the BVI Financial Services Commission (FSC).

Cayman Islands

Phase Two of the regulatory framework for virtual asset services commenced on 1 April 2025, introducing amended acts and regulations to enhance the oversight of virtual asset activities. The framework aims to balance innovation with robust regulatory standards.

Grenada

Grenada implemented the Virtual Asset Business Act in July 2021, providing a legal foundation for regulating virtual asset service providers. The legislation seeks to enhance transparency, integrity, and security within the virtual asset sector.

St. Kitts and Nevis

The Virtual Assets Act, 2020, establishes a comprehensive legal framework for the regulation of virtual assets in St. Kitts and Nevis. The Act outlines requirements for registration, compliance, and supervision of virtual asset service providers.

Estonia

Estonia has introduced requirements for virtual currency service providers, requiring licences from the Financial Intelligence Unit (FIU) and adherence to anti-money laundering and counter-terrorism financing measures. These regulations aim to mitigate financial crimes and ensure the integrity of the virtual asset market.

Isle of Man

The Isle of Man has established a regulatory framework for virtual assets, aiming to balance consumer protection, anti-money laundering measures, and innovation. The Financial Services Authority (IOMFSA) oversees virtual asset service providers.

Gibraltar

Gibraltar's Financial Services (Distributed Ledger Technology) Regulations provide a framework for blockchain and cryptocurrency businesses. The regulations focus on consumer protection, market integrity, and financial stability, seeking to foster a conducive environment for digital asset innovation.

Guernsey

Guernsey has issued new regulations for virtual assets and innovative finance, requiring businesses operating platforms to assess the net worth and financial assets of lenders or investors. These measures aim to enhance transparency and protect stakeholders in the virtual asset market.

Jersey

Jersey's regulatory authorities have released consultations for new prospectus rules and the crypto-asset reporting framework, reflecting the island's proactive approach to adapting its regulatory environment to the evolving digital asset landscape.

United States

In 2025, the United States witnessed a paradigm shift in its approach to virtual assets under President Donald Trump's administration. This shift was characterised by a series of executive actions, regulatory reforms, and policy initiatives aimed at fostering innovation, aiming to provide greaterregulatory clarity, and positioning the U.S. as a global leader in the digital asset space.

Executive Actions and Policy Initiatives

A pivotal moment in 2025 was the issuance of Executive Order 14178 on 23 January 2025, titled "Strengthening American Leadership in Digital Financial Technology." This directive underscored the administration's commitment to supporting the responsible growth and utilisation of digital assets and blockchain technology across all economic sectors. Key components of the order included:

- Prohibition of Central Bank Digital Currencies (CBDCs): The order explicitly prohibited the establishment, issuance, or promotion of any CBDCs, reflecting concerns over potential government overreach and the preservation of monetary sovereignty.
- Formation of the Presidential Working Group on Digital Asset Markets: This group was tasked with developing a comprehensive federal regulatory framework for digital assets within 180 days, aiming to harmonize the regulatory landscape and foster innovation.
- Promotion of Dollar-Backed Stablecoins: The administration advocated for the global promotion of legitimate dollar-backed stablecoins, viewing them as instruments to reinforce the U.S. dollar's dominance in the digital economy.

Further advancing this agenda, President Trump signed an executive order on 6 March 2025, establishing the Strategic Bitcoin Reserve and the U.S. Digital Asset Stockpile. This initiative aimed to leverage seized digital assets to bolster national reserves and signaled a strategic embrace of cryptocurrencies at the federal level.

Regulatory Reforms and Agency Actions

The Securities and Exchange Commission (SEC) underwent significant changes to align with the administration's pro-crypto stance. Acting Chairman Mark Uyeda announced the formation of the Crypto Task Force, led by Commissioner Hester Peirce, known for her crypto-friendly views. The task force was charged with developing a clear and comprehensive regulatory framework for digital assets, moving away from the previous enforcement-centric approach.

The task force initiated a series of public roundtables to engage stakeholders and solicit input on various aspects of crypto regulation, including the classification of digital assets and the establishment of disclosure standards. This collaborative approach aimed to balance investor protection with the facilitation of innovation.

Additionally, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) issued guidance clarifying that banks could engage in cryptocurrency activities without prior approval, provided they adhered to existing regulatory requirements. This move was intended to integrate digital assets into the traditional financial system and encourage institutional participation.

Legislative Developments

In the legislative arena, Congress deliberated on several bills aimed at regulating the digital asset space. The Stablecoin Tethering and Bank Licensing Enforcement (STABLE) Act sought to establish a comprehensive framework for stablecoin issuers, mandating stringent reserve requirements and oversight.

Notwithstanding partisan debates, there was bipartisan recognition of the need for clear and consistent regulations to foster innovation while ensuring financial stability and consumer protection. The administration's proactive stance was seen as a catalyst for legislative action in this domain.

Industry Engagement and Public Perception

The incoming 2025 U.S. administration's initiatives received a mixed response from various stakeholders. The International Monetary Fund (IMF) expressed cautious optimism, with Managing Director Kristalina Georgieva noting that the initial steps toward digital deregulation were encouraging, provided they were implemented judiciously to mitigate financial and macroeconomic risks.

Industry leaders welcomed the regulatory clarity and the government's willingness to engage with the crypto sector. The White House Crypto Summit, held on 7 March 2025, exemplified this collaborative approach, bringing together policymakers and industry representatives to discuss the future of digital assets in the U.S.

The regulatory environment in the U.S. has experienced a paradigm shift under the Trump administration. On 23 January 2025, President Donald Trump signed Executive

Order 14178, titled "Strengthening American Leadership in Digital Financial Technology." This order revoked previous directives, prohibited the establishment of a central bank digital currency (CBDC), and mandated the creation of a group to propose a federal regulatory framework for digital assets within 180 days. This move signifies the administration's intent to foster a more permissive regulatory environment for digital assets.

Concurrently, the SEC, under Acting Chairman Mark Uyeda, established a Crypto Task Force led by Commissioner Hester Peirce. This task force is dedicated to developing a comprehensive and clear regulatory framework for crypto assets, reflecting a shift towards accommodating the digital asset industry.

Global Perspective

Globally, regulatory approaches have varied, with some jurisdictions embracing digital assets and others exercising caution. For example, the Financial Action Task Force (FATF) has emphasized the need for countries to implement Anti-Money Laundering (AML) and Counter-Terrorist Financing (CTF) regulations for virtual assets. While progress has been made, the FATF notes that global implementation remains inconsistent, urging jurisdictions to prioritise regulatory measures.

Technical Developments

The technical landscape of virtual assets has seen significant innovations aimed at enhancing scalability, security, and functionality. Notably, Mastercard has been developing a blockchain-based network to facilitate transactions of digital assets among consumers, merchants, and financial institutions. This initiative seeks to integrate a compliant framework similar to Venmo for digital money transfers, reflecting efforts to bridge traditional financial systems with emerging digital asset technologies.

In the realm of data management, concepts like the Digital Asset Data Lakehouse have emerged. This architecture leverages cloud-native technologies and modular micro-services to enable efficient data management and access across stakeholders, addressing challenges such as scalability and security in managing blockchain data.

The metaverse and virtual real estate sectors have experienced substantial growth. Projections indicate that the metaverse real estate market is expected to expand from US$4.12 billion in 2025 to approximately US$67.40 billion by 2034, reflecting a compound annual growth rate (CAGR) of 36.55%. This surge underscores the increasing integration of virtual assets into digital environments and the broader economy.

At the same time, the past two years or so have seen a number of innovative building and scaling solutions. An example is Hong Kong-based Scroll.io which is a building a layer 2 rollup network on Ethereum. Scroll's open-source, security-focused scaling solution provides a cheaper and more accessible means of scaling Ethereum.

The Way Forward

The Trump administration's approach in 2025 marked a significant departure from previous regulatory frameworks, placing considerable emphasis on deregulation, innovation, and strategic integration of digital assets into the national economy. By prioritising regulatory clarity, actively engaging industry stakeholders, and positioning the United States strategically in global digital asset markets, the administration sought to secure America's competitive advantage in financial technology.

The shift away from the possibility of a central bank digital currency and towards promoting privately issued, regulated stablecoins underscored a broader philosophy of reducing governmental intervention in monetary systems while reinforcing the U.S. dollar's international dominance. Furthermore, initiatives such as the Strategic Bitcoin Reserve demonstrated a nuanced understanding of the strategic importance of cryptocurrencies, indicating a willingness to leverage digital assets as tools for economic and geopolitical influence.

The regulatory clarity introduced by the incoming 2025 U.S. administration is likely to lead to increased institutional investment and mainstream adoption of digital assets in the U.S. through 2025 and 2026. However, this trajectory will depend heavily on continued bipartisan legislative support, the robustness of newly established regulatory frameworks, and the evolving international regulatory environment. If the regulatory approach proves balanced, the U.S. stands poised to remain a global leader in digital asset innovation.

Ultimately, the period ahead is likely to be characterised by a balancing act: fostering an innovative digital asset environment conducive to growth, whilst ensuring adequate protection against systemic risks and market abuses. The success of the current US administration’s policy approach may be judged by its effectiveness in achieving this balance, and the ability to maintain the United States' leadership in global digital finance beyond 2026.

Julia Charlton

Charltonsquantum.com

Hong Kong

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