

ARTICLE

VIRTUAL ASSET AND INITIAL TOKEN OFFERING SERVICES

NEW REGULATORY REGIME

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With the coming into operation of the Virtual Asset and Initial Token Offering Services Act 2021 (the “Act”) on 7 February 2022, Mauritius is seeking to become a jurisdiction of choice for investors to conduct business in virtual assets. This Act comes at an opportune time when there is an increase in interest from investors.

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The Act within the current legislative landscape

Prior to the Act, a person wishing to undertake services involving virtual assets or the set-up of virtual assets platforms would only have had recourse to the following licences:

- (a) Regulatory Sandbox Licence which applies to innovative business activities for which there exists no legal framework or adequate provisions under local legislation;
- (b) Digital Asset Marketplace Licence under the Financial Services Act; or
- (c) Custodian Services (Digital Asset) Licence under the Financial Services Act.

However, with the coming into operation of the Act, both the Digital Asset Marketplace Licence and the Custodian Services (Digital Asset) Licence cease to exist.

Virtual asset service providers or issuers initial token offerings holding a Regulatory Sandbox Licence, must, not later than 3 months after the commencement of the Act, make an application to the Financial Services Commission (“FSC”) to be licensed as a VASP.

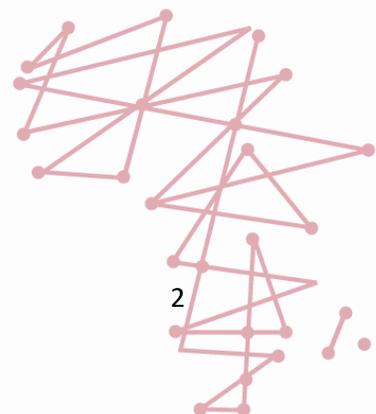
The FSC is now the focal agency which regulates persons providing services involving virtual assets such as cryptocurrencies.

Overview of the Act

The new legislative framework sets out the licensing requirements for virtual assets service providers. A “virtual asset service provider” (“VASP”) is defined as -

‘a person that, as a business, conducts one or more of the following activities or operations for, or on behalf of, another person –

- (a) *exchange between virtual assets and fiat currencies;*
- (b) *exchange between one or more forms of virtual assets;*
- (c) *transfer of virtual assets;*
- (d) *safekeeping of virtual assets or instruments enabling control over virtual assets;*
- (e) *administration of virtual assets or instruments enabling control over virtual assets;*
- (f) *participation in, and provision of, financial services related to –*
 - (i) *an issuer’s offer and sale of a virtual asset;*
 - (ii) *an issuer’s offer or sale of a virtual asset.’*



The Act defines ‘virtual assets’ as a digital representation of value that may be digitally traded or transferred. A digital representation of fiat currencies, securities and other financial assets that fall under the purview of the Securities Act is however not considered to be a virtual asset.

Licensing requirements

Corporate structure of a VASP

Only a company may undertake the business activities of a VASP.

Business presence of VASP in Mauritius

The applicant for a VASP licence will also need to have a physical office in Mauritius. Moreover, the business activities of a VASP will need to be directed and managed from Mauritius.

Fit and proper person requirement

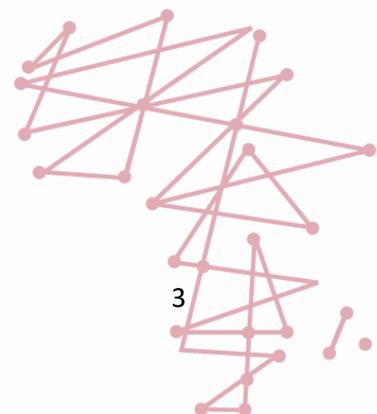
An applicant for a VASP licence, including its controllers, beneficial owners, associates and officers must satisfy the *fit and proper person* requirement. When considering whether a person is fit and proper, the FSC may, in respect of a person and, where the person is a company, the officers and beneficial owners of the company, have regard to the following:

- (a) the financial standing;
- (b) the relevant education, qualifications and experience;
- (c) the ability to discharge the relevant functions properly, efficiently, honestly and fairly;
- (d) the reputation, character, financial integrity and reliability; and
- (e) any relevant criminal record.

Types of VASP licences

The Act also provides for different classes of VASP Licences which an applicant will be required to apply for, depending on their range of activities. With an ingenious play on words, the five classes of VASP Licences are named “M”, “O”, “R”, “I”, “S”. The classes of VASP licences are broadly categorised as follows:

- (a) Class “M” – Virtual asset broker-dealer;
- (b) Class “O” – Virtual asset wallet services;
- (c) Class “R” – Virtual asset custodian;



- (d) Class “I” – Virtual asset advisory services; or
- (e) Class “S” – Virtual asset market place (or Virtual Asset Exchange).

AML/CFT compliance obligations

Against the backdrop of ML/TF risks, vulnerabilities and threats in the virtual assets sector, the FSC advocates a risk-based approach when establishing or continuing to establish business relationships with other VASPs and Issuers of Initial Token Offerings and customers involved in virtual assets activities.

On 28 February 2022, the FSC issued AML/CFT Guidance Notes for Virtual Asset Service Providers and Issuers of Initial Token Offerings (“**VASP AML/CFT Guidance Notes**”). These VASP AML/CFT Guidance Notes, amongst other things, depict, the salient Money Laundering and Terrorism Financing red flag indicators which are associated with virtual assets. These red flag indicators include scenarios where anonymity is prioritised by customers, where multiple high-end transactions are made within a short period, etc.

Final note

There are still many aspects of the new regulatory regime which remain to be further expanded on by the FSC, including the minimum stated unimpaired capital amount which will be specified under the FSC Rules. The Act however provides a starting point in providing legal certainty concerning the types of activities involving virtual assets that will be licensed by the FSC, and at the same time, addressing the numerous risks associated with dealings in virtual assets by placing more stringent requirements on virtual assets service providers.

Should you require legal advice on the matters mentioned above, please contact chambers@blc.mu.

