

Regulation of virtual asset service providers (VASPs)

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The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 will regulate and license persons providing a range of services including those related to virtual assets and cryptocurrencies (known as Virtual Asset Service Providers or **VASPs**). In this Update, we consider the impending regulation of VASPs.

Introduction

To recap, the Guernsey Financial Services Commission (the **Commission**) has been busy since February considering licence applications under the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**), ahead of its full implementation on **1 July 2023** when the LCF Law, together with the Lending, Credit and Finance Rules and Guidance, 2023 (the **LCF Rules**), will be fully operational.

The regulation of VASPs is a new regime for the Bailiwick of Guernsey (the **Bailiwick**), which provides a welcome framework for anyone using or looking to use the Bailiwick to service or to launch their virtual asset business, whether relating to cryptocurrencies, non-fungible tokens (NFTs), decentralised autonomous organisations (DAOs), virtual asset exchange or otherwise.

The rationale for regulating VASPs is to ensure that anyone carrying out activities in this business sector, which is considered by the Commission to be potentially high risk, is properly regulated for the purposes of anti-money laundering and countering the financing of terrorism and proliferation financing. Similar legislation has been enacted in other offshore finance centres in recent years.

What is a virtual asset and what services provided in relation to virtual assets are in scope?

A 'virtual asset' is broadly a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. This includes cryptocurrencies and other crypto assets but does not include digital records of ownership such as share registers or bank accounts in digital form. It does not include digital representations of fiat currencies or general securities and derivatives within the meaning of Category 2 in Schedule 1 to the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the **POI Law**) and other financial assets.

A VASP is an entity or individual who offers and/or undertakes the following services relating to virtual assets:

- exchanges between virtual assets and fiat currencies
- exchanges between one or more forms of virtual asset
- transfers of virtual assets
- safe-keeping and/or administration of virtual assets or instruments enabling control over them (which includes providing or facilitating the control of virtual assets or governing their use (including the holding and keeping of virtual assets by custodial wallet service providers))
- participation in and the provision of financial services relating to an issuer's offer and/or sale of virtual assets (including an initial coin offering), whether by the issuer of the asset or a service provider

- affiliated or unaffiliated with the issuer in respect of the issue, offer, sale, distribution, ongoing market circulation and trading of the asset (including book-building, underwriting and market making) and
- any other service or activity in respect of virtual assets specified by the States of Guernsey Policy and Resources Committee (the **States Committee**).

These terms align with standards and recommendations of the Financial Action Task Force, with Updated Guidance for a Risk-Based Approach to Virtual Assets and VASPs having been issued in 2021 ([here](#)).

Given the wide range of activities falling within this sector and its fast-evolving nature, the Commission has made clear that it intends to apply a broad interpretation when defining virtual assets and VASP activities to ensure that emerging products and services are appropriately captured.

The licensing requirement

VASP activities will fall to be regulated under the LCF Law where they are carried on by way of business in or from within the Bailiwick or by a Bailiwick body. From **1 July 2023**, a VASP must have a licence under Part III of the LCF Law (a **Part III licence**), unless an exemption applies.

The following persons do not require a Part III licence:

- those who make investments, hold, or trade, in virtual assets for their own benefit
- licensees under the regulatory laws providing administration or management services to VASPs which either hold a Part III licence or are exempt under the bullet point immediately above, or
- authorised or registered collective investment schemes investing, holding, or trading in virtual assets.

What are the ongoing obligations of a Part III licensed VASP?

The LCF Rules set out the ongoing obligations of a licensed VASP, including that:

- its board must ensure that it has sufficient resources within the Bailiwick to effectively oversee and control the activities and business of the licensee
- its board and senior management must ensure that they have sufficient knowledge, understanding and expertise with respect to its activities and the services it provides
- it is not permitted to outsource any of its functions outside of the Bailiwick without the Commission's prior written agreement
- it must publish an annual declaration about the environmental impact of the consensus mechanisms of each virtual asset with which it deals, which must remain published and readily accessible to the public and
- it must avoid co-mingling virtual assets bought or held for a customer with virtual assets in its beneficial ownership.

Consultation on AML/CTF obligations

In June 2023, the Commission published a consultation on AML/CTF obligations for VASPs which closes on **3 July 2023**. It proposes additional rules and guidance for VASPs and specified businesses with a connection to, or involvement with, virtual assets, on how to meet the requirements of Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the **POC Law**) under the rules in the Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**). These rules and guidance are in a new chapter of the Handbook.

The proposed rules and guidance are to support amendments made by the States Committee to Schedule 3 of the POC Law, upon which industry has already been consulted and which take into account feedback previously given.

It is envisaged that the updated Handbook will be issued in early July following the commencement on **1 July 2023** of the licensing regime for VASPs and the coming into force of the legislative changes to Schedule 3 of the POC Law regarding virtual asset information requirements (among other things) expected to take effect after being laid before the States on **5 July 2023**. There will **not** be any transitional provisions.

Next time

In our next update, we will be looking at the enforcement regime under the LCF Law. For updates already published in our series on the LCF Law, visit our Lending, Credit and Finance Hub [here](#).

If you have any questions or queries, please get in touch with your usual Mourant contact.

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