

# Virtual Asset Service Providers (VASPs) under Jersey's revised AML/CFT/CPF Regime (VASPs)?

UPDATE

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Our recent update, '[What is the revised scope of Jersey's AML/CFT/CPF Regime and what are the options for those now in scope?](#)', (our **Scope Update**), explained how the scope of Jersey's regime in relation to anti-money laundering, counter-terrorist financing, and counter proliferation financing (the **AML/CFT/CPF Regime**) has been aligned to the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (**FATF Recommendations**) of the Financial Action Task Force (**FATF**).

This update focuses on the implications of the updates to Jersey's AML/CFT/CPF Regime for Virtual Asset Service Providers (**VASPs**).

## Context

Virtual Currency Exchange Businesses (**VCEBs**) have been required to register with the Jersey Financial Services Commission (**JFSC**) since 2016 and have therefore been subject to the AML/CFT/CPF Regime somewhat in isolation to the wider Virtual Assets industry. As part of the updates to the AML/CFT/CPF Regime, Jersey's Virtual Asset and VASPs regime has been aligned to the FATF Recommendations to ensure that all Virtual Asset activities are subject to the same AML/CFT/CPF requirements.

In line with the [Government statement on initial coin offerings \(ICOs\) issued on 13 December 2017](#) and as augmented by the addition of ICOs, crypto exchanges and cryptocurrency related services to Table 2 of the JFSC's Sound Business Practice Policy, Virtual Assets have long been a point of interest for the JFSC and the focus of proportionate and proactive AML/CFT/CPF regulation. The latest changes represent a welcome consolidation and simplification of the requirements, and it is now the role of the Virtual Assets industry to interpret and apply the AML/CFT/CPF Regime in a consistent and reasoned manner.

The revised Proceeds of Crime (Jersey) Law 1999 (**POCL**) now includes the following new definitions:

- **Virtual Asset** means a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes.

Article 36 of POCL provides that in interpreting an expression used in Schedule 2, account must be taken of the meaning, if any, given to that expression in the FATF Recommendations as updated from time to time. At this time, the FATF Recommendations state that '[v]irtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations'.

- **Virtual Asset Service Provider** (or VASP) includes a natural or legal person or arrangement that carries on the business of conducting one or more of the following activities or operations to, for or on behalf of another natural or legal person or arrangement:
  - exchange between virtual assets and fiat currencies,
  - exchange between one or more forms of virtual assets,
  - transfer of virtual assets (see below),
  - safekeeping or administration of virtual assets or instruments enabling control over virtual assets,

- participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

In relation to Virtual Assets, **transfer** means to conduct a transaction on behalf of another natural or legal person or arrangement that moves a Virtual Asset from one Virtual Asset address or account to another.

### VASP activities

Schedule 2 of the revised POCL sets out the list of activities and operations that are potentially within the scope of the revised AML/CFT/CPF Regime. These activities are referred to as 'financial services business' activities and include amongst them the activities of a VASP.

The JFSC has published [Guidelines](#) on interpretation which are indicative rather than exhaustive, and must be interpreted and applied in the right context. The Guidelines provide the following commentary on interpreting the definition of VASP:

- a person who provides a platform for other persons to conduct the activities or operations specified in the definition of VASP is considered to be a VASP;
- where a person provides a platform for dealing in Virtual Assets, whether or not they engage in dealing on their own behalf, they are within the scope of the definition of VASP; and
- where a person's activities or operations involve the provision of services in respect of instruments enabling control over Virtual Assets (for example the custody of cryptographic keys), they may conclude that they do not meet the definitions of 'safe keeping and administration'<sup>1</sup> or 'safe custody services'<sup>2</sup>, however such persons are within the scope of the definition of VASP.

#### As a business?

However, a Jersey entity carrying on VASP activities, or a non-Jersey entity carrying on VASP activities in or from within Jersey, will only be in scope of the AML/CFT/CPF Regime if those activities are conducted 'as a business'. Whether a VASP activity is being conducted 'as a business' is a subjective question, and requires entities to consider various indicative factors and whether the VASP activities are conducted for and on behalf of 'another natural or legal person'.

According to the Guidelines, indicators that a person is conducting an activity 'as a business' include:

- the person holds out or publicly offers to conduct the relevant activity for other persons;
- the activity or operation being conducted for commercial purposes with the intention of earning a profit through receipt of compensation;
- the level of financial compensation from the activity or operation being significant; and
- the person conducts the activities or operations with a view to making a profit, including where the intention is for the profit to come to someone else.

No single indicator is determinative, and each must be considered in a qualitative fashion and on case-by-case basis. For example, even if an entity is making a profit, it may not be deemed to be carrying out the VASP activity 'as a business' if, on balance, the other indicators sway the analysis in that direction when taken as a whole and in the relevant circumstances.

VASP activities are often complex, dynamic and difficult to isolate from other operations, which makes them inherently tricky to analyse against the subjective framework of the AML/CFT/CPF Regime. On that basis, we have found that many clients have found our input and a second pair of eyes to be helpful during scoping exercises.

### Compliance with the AML/CFT/CPF Regime

If a VASP is in scope of the AML/CFT/CPF Regime, our [Scope Update](#) sets out more information on what obligations apply and how the VASP can go about complying with those obligations. However, it is worth noting that an anti-money laundering services provider (AMLSP) cannot complete an application for

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<sup>1</sup> Paragraph 12 of Schedule 2 (Part 2 – Financial Institutions) to POCL and paragraph 3.15 of the Guidelines.

<sup>2</sup> Paragraph 13 of Schedule 2 (Part 2 – Financial Institutions) to POCL and paragraph 3.16 of the Guidelines.

registration with the JFSC under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 on behalf of a VASP. The VASP must complete the application form.

The JFSC has published an [infographic](#) which sets out when an entity conducting in scope VASP activities must register with the JFSC to continue conducting that business. In summary:

- existing entities registered as a VCEB must register by 30 June 2023 – treated as a notification only;
- existing entities relying on the 'turnover' exemption<sup>3</sup> from registration as a VCEB must register by 30 June 2023 – treated as a new application;
- existing entities registered to conduct financial service business under the Financial Services (Jersey) Law 1998 must register by 30 June 2023 – treated as a notification only; and
- new entities established after 30 January 2023 must register before conducting business – treated as a new application.

### How we can help

It is important that all relevant entities:

- consider whether they are in scope (and document the basis for their decision either way, ideally at a board meeting); and
- if they conclude that they are in scope, register with the JFSC and have appropriate arrangements in place to fulfil their AML/CFT/CPF obligations (whether that's by having an agreement in place to rely on an AMLSP or otherwise).

We have already helped multiple clients who are active in the Virtual Assets space assess their activities to determine whether they are carrying out any VASP activities and, if so, whether they are doing so 'as a business'. If they are in scope, we have advised clients on completing their registration with the JFSC and, together with our Mourant Consulting team, putting in place appropriate arrangements to fulfil their AML/CFT obligations and monitoring them on an ongoing basis.

Please get in touch if you have any questions regarding this update and how the recent changes might affect your business.

### Contacts

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<sup>3</sup> As contained within the Proceeds of Crime (Supervisory Bodies) (Virtual Currency Exchange Business) (Exemption) (Jersey) Order 2016.

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