

UPDATE

Stablecoin and token issuances in the BVI

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This update looks at the regulatory treatment of stablecoin and token issuances in the BVI.

Introduction

The British Virgin Islands (BVI) brought the Virtual Assets Service Providers Act, 2022 (the **VASP Act**) into force in February 2023, introducing a new regulatory framework for virtual asset service providers undertaking certain business activities in or from within the BVI.¹ However, whilst most stablecoins or tokens will likely fall within the definition of a 'virtual asset' under the VASP Act,² the BVI VASP Act does not generally treat the issuance of virtual assets (including stablecoins or tokens) as a regulated activity in and of itself.

Stablecoins and tokens

What are they?

Generally speaking:

- a **stablecoin** is a type of cryptocurrency designed to maintain a stable value by being pegged to a reserve asset, such as a fiat currency (like the US dollar or Euro), a commodity (such as gold), or even another cryptocurrency; and
- a **token** is a unit of value issued by a project or organization that exists on a blockchain, and which can represent a wide range of assets, services or other utilities.

The BVI VASP Act does not distinguish between different types of virtual assets, however they may be named or categorised. This means that the terms of any proposed virtual asset issuance or service must be analysed to see if the activity will fall within the BVI's regulatory framework.

Are they investments?

One key question when considering the issue of a stablecoin or token is whether that asset constitutes an 'investment' for the purposes of the Securities and Investment Business Act, Revised Edition 2020 (as amended, **SIBA**). This is particularly pertinent for service providers within the coin or token's ecosystem, though likely less so for the issuer itself.³

SIBA sets out an exhaustive list of financial instruments which are 'investments', including traditional products such as company shares, partnership interests and derivatives of the same. A stablecoin which is

¹ For more information on the VASP Act, see our guide: [BVI Virtual Assets Service Providers Act is now in force](#).

² **Virtual Asset** is defined under the VASP Act as meaning 'a digital representation of value that can be digitally traded or transferred, and can be used for payment or investment purposes, but does not include: (a) digital representations of fiat currencies and other assets or matters specified in the [Guidelines issued by the BVI Financial Services Commission]; or (b) a digital record of a credit against a financial institution of fiat currency, securities or other financial assets that can be transferred digitally'.

³ The issuance, redemption or repurchase by an entity of its own 'investments' is an excluded activity under SIBA.

pegged to a fiat currency or which is 'algorithmic'⁴ is extremely unlikely to constitute an investment under SIBA and, while most tokens will not constitute 'investments' under SIBA, a token which (for example) grants holders rights synonymous with or referable to shares or partnership interests (eg, the right to receive dividends, a profit share and/or voting rights) may bring that virtual asset within SIBA's scope.

Accordingly, the individual characteristics of each new product and the holders' rights should be carefully considered prior to offering or issuance. The BVI Financial Services Commission (the **FSC**) has issued [Guidance on the Regulation of Virtual Assets in the Virgin Islands](#), which specifically covers the relationship between virtual assets and SIBA.

A person conducting investment business for the purposes of SIBA in or from within the BVI must be licensed by the FSC or fall within one of the exemptions or safe harbours under SIBA. For more information, see our guide on [What you need to know about the regulation of investment business in the BVI](#).

Treatment under the VASP Act

The VASP Act regulates virtual asset service providers (**VASPs**) which provide a virtual asset service as a business. The definition of 'virtual asset service' under the VASP Act does not include the issuance of stablecoins, tokens or other virtual assets without additional activity. Rather, the VASP Act primarily seeks to regulate virtual asset-related activities conducted as a business on behalf of third parties, including providing wallets or other custody services, facilitating exchanges between virtual assets and other assets or transfers of virtual assets, or providing financial services in relation to an issuer's offer or sale of virtual assets.

Entities not providing regulated activities to third parties are not required to be regulated under the VASP Act.

Other regulatory considerations

AML/CFT/CPF requirements

All BVI persons are subject to the BVI's Proceeds of Criminal Conduct Act, Revised Edition 2020 (as amended, the **PCCA**), which sets out the main money laundering offences, as well as BVI sanctions legislation. Accordingly, regardless of whether a coin or token issuer falls within scope of the VASP Act, it will need to consider how it will conduct diligence on the coin/token holders to ensure that it does not interact with designated persons under applicable sanctions regimes or facilitate financial crimes.

Economic substance

The BVI's economic substance regime applies to BVI 'legal entities' conducting certain 'relevant activities'; see our guide to [BVI economic substance legislation](#) for more information.

A pure stablecoin or token issuance by a BVI entity would not be expected to constitute a 'relevant activity' for the purposes of the BVI's substance regime, simplifying ongoing compliance requirements and reducing ongoing costs. However, ancillary activities proposed to be conducted by an issuer (if any), such as intra-group lending, should be considered to ensure that the issuer does not inadvertently fall within scope of this regime.

Financing and Money Services Act

The BVI's Financing and Money Services Act, Revised Edition 2020 (as amended, **FMSA**) regulates money services business, which includes activities such as dispensing money, transmitting money, cheque cashing services, currency exchange and dealing in travellers' cheques. A virtual asset would not be expected to fall within the definition of 'money' for these purposes, which is understood by industry and by reference to certain definitions under the Regulatory Code, Revised Edition 2020 (as amended) and the Interpretation Act (CAP. 136), to be limited to fiat currencies.

Accordingly, issuers of stablecoins and tokens can expect not to be subject to regulation under FMSA.

⁴ An algorithmic stablecoin is a type of cryptocurrency that aims to maintain a stable value without being backed by traditional assets, instead using algorithms and smart contracts to manage the coin's supply based on market demand.

How can we help?

The existing BVI legislative and regulatory framework offers a great deal of certainty but also flexibility to support offerings of all nature of stablecoins and tokens.

To find out more, or to discuss your proposed issuance, please get in touch with your usual Mourant contact or one of the key contacts named below.

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