

# BVI Virtual Assets Service Providers Act is now in force

Last reviewed: February 2023

The British Virgin Islands has brought the Virtual Assets Service Providers Act, 2022 (the **VASP Act**) into effect as of 1 February 2023. The VASP Act introduces a new regulatory framework for virtual assets service providers carrying out certain business activities in or from within the BVI

## The VASP regime – an overview

The introduction of the VASP Act means that virtual assets service providers (**VASPs**) that fall within the regime must now register as a VASP, under one or more categories, with the BVI Financial Services Commission (the **FSC**).

BVI entities that are already providing virtual assets services in or from within the BVI, and intend to continue to do so, will need to apply for registration under the VASP Act by **31 July 2023**. If the FSC receives an application by that deadline, applicants may continue to provide their services until they receive notification from the FSC that their application is refused or approved. Such businesses should, if they are not already, be complying with the BVI Anti-money Laundering Regulations (Revised Edition 2020) and the Anti-money Laundering and Terrorist Financing Code of Practice (Revised Edition 2020) respectively (together, as amended, the **AML Rules**). Please see our previous update, [BVI legislative update for virtual asset service providers](#), for further details.

Persons that are considering using or operating a BVI entity in connection with the launch of their virtual asset business, including those relating to NFTs, decentralised finance protocols, exchanges and DAOs, should consider the VASP regime and the AML Rules and their implications when setting up their business. If the proposed activities or operations fall within scope of the VASP Act, they will need to register as a VASP before commencing their activity or operations.

The VASP regime consists of:

- the VASP Act;
- the FSC's Guidance on application for registration of a VASP; and
- the FSC's Guidance for VASPs to the prevention of money laundering, terrorist financing and proliferation financing.

## What is a VASP?

A VASP is a BVI entity which provides a virtual assets service in relation to virtual assets<sup>1</sup>, as a business, on behalf of another person in the following activities or operations:

- exchange between virtual assets and fiat currencies;
- exchange between one or more forms of virtual assets;

<sup>1</sup> Broadly, a **virtual asset** is a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes.

- transfer of virtual assets, where the transfer relates to conducting a transaction on behalf of another person that moves a virtual asset from one virtual asset address or account to another;
- 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 or sale of a virtual asset; or
- perform such other activity or operation as may be specified by the VASP Act or by subsequent regulations.

### **What is a virtual assets service activity?**

The following activities would be considered the business of providing a virtual assets service:

- hosting wallets or maintaining custody or control over another person's virtual asset, wallet or private key;
- providing financial services relating to the issuance, offer or sale of a virtual asset;
- providing kiosks (such as automatic teller machines, bitcoin teller machines or vending machines) for the purpose of facilitating virtual assets activities through electronic terminals to enable the owner or operator of the kiosk to actively facilitate the exchange of virtual assets for fiat currency or other virtual assets; or
- engaging in any other activity that, under subsequent guidelines when issued, constitutes the carrying on of the business of providing virtual asset service or issuing virtual assets or being involved in virtual asset activity.

### **Virtual assets custody service**

A virtual assets custody service is defined as *'the acceptance for safekeeping of virtual assets or instruments that enable a VASP to exercise control over the virtual assets or instruments'*. In addition to the other obligations imposed on VASPs, any BVI entity performing this activity also needs to:

- enter into safekeeping arrangements with the owner of the virtual asset and instruments, with respect to matters such as the duration of the arrangement, fees payable, client access to the virtual assets, security, etc;
- source and adopt best practices in relation to information technology to be applied to the safekeeping of virtual assets; and
- ensure that any ancillary or subsidiary proceeds relating to virtual assets and related instruments accrue to the benefit of the owner of the virtual assets, unless otherwise agreed between the parties.

### **Virtual assets exchange**

The VASP Act defines a virtual assets exchange as *'a trading platform that is operated for the purpose of allowing an offer or invitation to be made to buy or sell any virtual asset in exchange for money or any virtual asset and which comes into custody, control, power or possession of, or over, any money or any virtual asset at any point in time during its course of business'*.

Further regulations are to be published specifying the licensing requirements for a BVI entity that intends to operate a virtual assets exchange.

A BVI entity which operates a virtual assets exchange may be subject to restrictions and prohibitions including in relation to:

- the geographic area in which the virtual assets exchange may carry on its business;
- the types of clients that the service may be marketed to;
- the types of virtual assets that may be traded on the exchange;
- disclosures to be made to clients in relation to the operation of the virtual assets exchange, including disclosures relating to theft or loss of assets and any related insurance obligations;
- supervision of trading activities, including actions concerning the freezing and suspension of trading of virtual assets;
- financing in relation to the purchase of virtual assets; and
- any other necessary control measures to safeguard the integrity of the virtual assets exchange and protect the interests of persons investing on the exchange.

A VASP that is registered to operate a virtual assets exchange is also prohibited from:

- providing financing to its clients for the purchase of virtual assets, unless (i) it has permission from the FSC, and (ii) it makes disclosures to its clients regarding the terms of, and the risk associated with, the financing;
- engaging in trading or marketing activities in relation to any virtual assets for its own benefit which may be detrimental to the interests of its clients, unless such activities (i) are necessary for the operation of the virtual assets exchange, and (ii) have been disclosed to its clients prior to engaging in the trading or marketing activities;
- permitting the trading of a virtual asset on its virtual assets exchange in a manner that is misleading or deceptive, or designed to defraud persons who subscribe for, or purchase, the virtual asset;
- permitting a client to trade in or purchase a virtual asset on its virtual assets exchange without first satisfying itself that the client is aware of the risks involved in trading in, subscribing for, or purchasing, the virtual asset;
- providing fiat currency to fiat currency exchange services to users of its virtual assets exchange without the written approval of the FSC; or
- engaging in any other activity which has the potential to compromise the integrity of the virtual assets exchange or erode public confidence in the exchange.

### **What is excluded?**

BVI entities engaging in or performing any of the following activities will not be treated as VASPs:

- providing ancillary infrastructure to allow another person to offer a service (eg a cloud data storage or integrity service provider responsible for verifying the accuracy of signatures);
- providing service as a software developer or provider of unhosted wallets whose function is only to develop or sell software or hardware;
- solely creating or selling a software application or virtual asset platform;
- providing ancillary services or products to a virtual asset network (including a hardware wallet manufacturer or unhosted wallets provider) to the extent that such services do not extend to engaging in or actively facilitating as a business any of those services for or on behalf of another person;
- solely engaging in the operation of a virtual asset network without engaging or facilitating any of the activities or operations of a VASP on behalf of customers;
- providing closed-loop items that are non-transferable, non-exchangeable, and which cannot be used for payment or investment purposes; and
- accepting virtual assets as payment for goods and services (such as the acceptance of virtual assets by a merchant when effecting the purchase of goods).

### **What about BVI token issuers?**

Based on the current VASP regime, a BVI entity that is solely a token issuer would not be considered a VASP and therefore would not need to apply to be registered with the FSC. However, if a BVI entity issues tokens and also provides services in relation to virtual assets which constitute a VASP activity (see above), this may bring it into scope of the regime. Regardless of whether the token issuer falls within scope of the VASP Act, practically it will need to consider how it will conduct diligence on the token holders to ensure that it does not interact with designated persons under sanctions regimes or facilitate financial crimes.

### **What if I am a VASP?**

VASPs operating in or from within the BVI before 1 February 2023 may continue to carry on their business provided that they apply for registration as a VASP by 31 July 2023. Alternatively, such VASPs may take the commercial decision to restructure their business or cease to carry out the regulated activities in or from within the BVI.

VASPs that are considering using a BVI entity to launch a virtual asset project and are not yet operating in or from within the BVI should consider whether their activities may be a VASP activity. If they fall within scope of the VASP Act, they will need to register as a VASP before commencing their activity or operations.

## Registration process

An application form, along with relevant supporting documents and fee, must be submitted to the FSC requesting registration under one of the following categories:

- carrying on the business of providing a virtual assets service;
- engaging in the business of providing a virtual assets custody service; and
- operating a virtual assets exchange.

The application form must include:

- the physical address of the VASP in the BVI;
- the names and address of the directors and senior officers;
- the names and address of the shareholders, including their level of shareholding;
- the name and address of the VASP's auditor;
- the name and address of the authorised representative;
- a business plan which includes:
  - the knowledge, expertise and experience of the person applying for registration;
  - detailed information on the nature, size, scope and complexity of the VASP;
  - underlying technology, method of delivery of the virtual asset service and the virtual asset to be utilised;
  - information on how the VASP will be marketed and the expected source of business;
  - information on the anticipated human resources capacity of the VASP at commencement and in the long term;
  - any planned outsourcing arrangements and the systems to be put in place to govern them; and
  - an indication of the initial capital and financial projections of the VASP covering the first three years of operation, including set-up costs;
- a written risk assessment of the VASP;
- a regulatory compliance manual;
- the proposed internal safeguards and data protection systems;
- the proposed system for handling client assets, custodian relationships and complaints;
- details of the applicant's legal advisers; and
- any other information the FSC considers appropriate.

The FSC may also require a VASP to have suitable insurance arrangements in place before approving a registration application.

## Application fees

The application form must be accompanied by the appropriate fee:

- **VASP** (excluding virtual assets custody service and virtual assets exchange):
  - on making the application: US\$5,000;
  - on initial registration as a VASP: US\$7,500; and
  - on renewal of the registration on an annual basis: US\$7,500
- **Virtual assets custody service:**
  - on making the application: US\$10,000;
  - on initial registration as a VASP: US\$15,000; and
  - on renewal of the registration on an annual basis: US\$15,000
- **Virtual assets exchange:**
  - on making the application: US\$10,000;
  - on initial registration as a VASP: US\$25,000; and
  - on renewal of the registration on an annual basis: US\$25,000

## Application timetable

The FSC aims to provide initial comments within six weeks of an application being submitted. The registration process should complete within six months of receipt of a completed submission, subject to responses to any questions and/or further information being promptly provided during the process.

## Officers/Functionaries

A VASP must have the following officers/functionaries who have been approved by the FSC:

- at least two individual directors (with no general requirement for a director to be physically resident in the BVI, although the FSC may require this depending on the nature and risk associated with a VASP);
- an authorised representative (registered with the FSC as such under the VASP Act);
- an auditor;
- a compliance officer; and
- a money laundering reporting officer.

## Continuing obligations of a VASP

Once registered, a VASP must:

- notify the FSC of any changes in the information submitted as part of its application;
- annually submit a copy of its auditor's report to the FSC;
- file an annual return with the FSC which reflects the VASPs financial position, client details, key performance indicators, client complaints and resolutions;
- ensure the safekeeping and segregation of client assets; and
- comply with all customer due diligence, anti-money laundering, counter terrorist financing and counter proliferation financing requirements. For more details on this, please see our previous [update](#).

## Penalties for non-compliance

Any director, partner or senior officer of a BVI entity which provides virtual assets services without being registered under the VASP Act may be fined up to US\$100,000 and/or sentenced to five years imprisonment, if they have acquiesced in the commission of the offence.

## Next steps and contacts

In addition to the VASP regime, there may be other BVI laws and regulations which apply to your business/operations.

A full list of contacts specialising in virtual assets business in the BVI and the VASP Act can be found [here](#).