

On the horizon – the BVI to regulate virtual assets service providers

Briefing Summary: On 9 September 2022, the BVI Financial Services Commission (the “Commission”) circulated a draft Virtual Assets Service Providers Act, 2022 (the “Proposed VASP Bill”) for consultation. The consultation period of two weeks closed on 23 September 2022.

Service Area: Banking and Finance, Corporate, Corporate Regulation and Compliance, Regulatory, Corporate Regulation and Compliance

Sector: Blockchain, Digital Assets and Tokenisation, Fintech and Regtech

Location: British Virgin Islands

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The Proposed VASP Bill primarily: (i) defines the virtual assets activities that require registration; (ii) prescribes the criteria for a virtual assets service provider (“VASP”) to register; (iii) sets out the ongoing requirements and obligations of VASPs; and (iv) specifies the enforcement and general powers of the Commission as well as the penalties for contravening or failing to comply with, a provision of the Proposed VASP Bill.

Given the Proposed VASP Bill may change following the consultation phase, we have kept this note relatively brief and will produce a more detailed version once the law comes into force.

Virtual assets services

The Proposed VASP Bill defines ‘virtual assets service’ as the business of engaging, on behalf of another person, in any VASP activity or operation, and includes:

- 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 the exchange of virtual assets; or

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- engaging in any other activity that, under guidelines issued pursuant to section 41A of the Financial Services Commission Act, constitutes the carrying on of the business of providing virtual asset service or issuing virtual assets or being involved in virtual asset activity.

In this regard, “VASP” means a virtual asset service provider who provides, as a business, a virtual assets service and is registered to conduct one or more of the activities or operations for or on behalf of another person:

- Operating an exchange between virtual assets and fiat currencies or between one or more forms of virtual assets.
- Assisting with the 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.
- Providing the safekeeping or administration of virtual assets or instruments enabling control over virtual assets.
- The participation in, and provision of, financial services related to an issuer’s offer or sale of a virtual asset.
- The performance of such other activity or operation as may be specified in the Act or regulations from time to time.

Note that based on the Proposed Draft VASP Bill, it appears that the issuance of virtual assets (for example an initial coin offering or ICO) may not be a regulated activity unless and until further guidelines are introduced. As such, the BVI may remain a viable choice (as it is currently) for launching a token.

Out of scope activities

However, not every type of virtual asset related activity will be in scope and the Proposed VASP Bill sets out a variety of activities which would not be subject to regulation. Some of those are highlighted below:

- Providing ancillary infrastructure to allow another person to offer services.
- 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 general ancillary services or products to a virtual asset network.
- 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.
- Accepting virtual assets as payment for goods and services.

Registration requirements

A person that wishes to carry on virtual asset services in or from within the BVI, will need to make an application to the Commission supported by:

- Details of proposed directors, shareholders, ultimate beneficial owners and senior officers.
- Application form, business plan, written risk assessment, written AML/CFT manual, written policy on internal safeguards, data protection and client assets and custodian systems.
- Details of custody (for custodians and virtual assets exchanges only)

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Ongoing requirements

The Proposed VASP Bill sets out a number of on-going obligations for VASPs which include:

- Appointing an authorised representative.
- Appointing an auditor and having the VASP's audited financial statements submitted within six months of its financial year.
- Having at least two individual directors one of whom is physically resident in the BVI (if required by the FSC, depending on the nature and risk associated with the VASP); and
- Appointing a compliance officer and establishing compliance policies, systems and controls and establishing an internal audit function.

Existing VASPs

Where a person is currently carrying on the business of providing virtual assets services in or from within the BVI, such person has six months from the enactment of the VASP Act to submit an application for registration.

The Proposed VASP Bill helpfully provides that an existing VASP is not required to discontinue carrying on the business of virtual assets services provided that the Commission receives the VASP application with the prescribed timeframe.

Penalties

The Proposed VASP Bill provides for administrative penalties of up to US\$100,000 or criminal action under which a conviction may have attached to it a sentence of up to a maximum of 5 years, in each case, based on the offence.

Next steps

Notwithstanding that the Proposed VASP Bill may undergo further changes, the draft framework gives a strong indication as to how virtual assets will be regulated in the BVI. As such, entities that are currently carrying on or intend to carry on virtual asset services in or from within the BVI should review their current or prospective activities and obtain preliminary BVI regulatory advice in respect of same.

Please feel free to reach out to any of our BVI regulatory specialists listed on this page to discuss further.

Carey Olsen (BVI) L.P. is registered as a limited partnership in the British Virgin Islands with registered number 1950.

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