

Cayman Blockchain Chapter (Mondaq)

Briefing Summary: This guide to blockchain regulation in the Cayman Islands covers the legal and enforcement framework, market, cryptocurrencies, smart contracts, data, cybersecurity, intellectual property, trends and predictions.

Service Area: Banking and Finance, Corporate

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

Location: Cayman Islands

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1. Legal and enforcement framework

1.1 What general regulatory regimes and issues should blockchain developers consider when building the governance framework for the operation of blockchain/distributed ledger technology protocols?

The primary regulatory regime to consider in the Cayman Islands is the Virtual Assets (Service Providers) Act ("**VASP Act**"). The VASP Act regulates certain blockchain-related activities and therefore may be relevant for certain protocols.

The other regulatory regime that may be relevant for protocols with an associated token or which enable trading of securities is the Securities and Investment Business Act ("**SIBA**").

1.2 How do the foregoing considerations differ for public and private blockchains?

The Cayman Islands regulator, the Cayman Islands Monetary Authority (**CIMA**), does not differentiate between public and private blockchains. However, the VASP Act and SIBA could be relevant for public and private blockchains, depending on their characteristics and operation. For example, both a private and public blockchain could involve the issuance of a token which could be captured under the VASP Act and may also be considered a security under SIBA. Specialist advice is recommended.

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1.3 What general regulatory issues should users of a blockchain application consider when using a particular blockchain/distributed ledger protocol?

The user of a blockchain or protocol should consider:

- the security of the blockchain or protocol; and
- the recourse it might have in the event of a loss due to hacking or some event negative event.

1.4 Which administrative bodies are responsible for enforcing the applicable laws and regulations? What powers do they have?

CIMA (as defined above) is the government body tasked with enforcing the VASP Act and retains wide-reaching powers to regulate persons and entities regulated pursuant to the VASP Act.

1.5 What is the regulators' general approach to blockchain?

CIMA has generally been fairly open and friendly in its approach to blockchain, while at the same time adopting a degree of caution in order to maintain the very high standards of the financial services industry.

1.6 Are any industry or trade associations influential in the blockchain space?

The most influential industry body is the Cayman Islands Blockchain Association, whose stated goal is to "*promote everything blockchain related in the Cayman Islands*".

2. Blockchain market

2.1 Which blockchain applications and protocols have become most embedded in your jurisdiction?

The principal blockchain applications which have become embedded in the Cayman Islands relate to digital assets and cryptocurrencies – specifically:

- governance and utility tokens;
- trading and exchange platforms; and
- decentralised finance and non-fungible tokens.

2.2 What potential new applications/protocols are most actively being explored?

In the Cayman Islands, a wide range of applications and protocols are being explored, with decentralised autonomous organisations the most popular given the existence of the Cayman Islands foundation company.

2.3 Which industries within your jurisdiction are making material investments within the blockchain space?

Many service providers (eg, lawyers, accountants, corporate service providers) are investing time and resources in being able to understand, advise on and facilitate newer blockchain applications through the provision of crucial infrastructure and support. There are also specific anti-money laundering and compliance services for cryptocurrency-related projects.

2.4 Are any initiatives or governmental programmes in place to incentivise blockchain development in your jurisdiction?

Aside from the VASP Act discussed in question 1, there are various organisations and bodies looking to attract talent in the Cayman Islands, including:

- Cayman Enterprise City, which facilitates entry into the special economic zone; and
- Tech Cayman.

3. Cryptocurrencies

3.1 How are cryptocurrencies and/or virtual currencies defined and regulated in your jurisdiction?

The VASP Act governs any entity that issues virtual assets or provides certain virtual asset services.

The VASP Act's implementation is occurring over two phases and began in October 2020. Phase 1 brought into force the anti-money laundering, counter-terrorist financing of terrorism, compliance and supervision provisions of the VASP Act.

Phase 2 has yet to come into force. When implemented, Phase 2 will introduce additional licensing requirements applicable to custody services and trading platforms and will provide for sandbox licences.

The VASP Act defines 'virtual assets' as "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 representation of fiat currencies". In this regard, the VASP Act distinguishes between virtual assets and 'virtual service tokens', which are defined as "digital representations of value which are not transferable or exchangeable with a third party at any time and includes digital tokens whose sole function is to provide access to an application or service or to provide a service or function directly to its owner".

The VASP Act requires all virtual asset service providers (**VASPs**) to register or obtain a licence (as applicable). A 'virtual asset service' is defined as the issuance of virtual assets or the business of providing one or more of the following services or operations for or on behalf of a natural or legal person or legal arrangement:

- exchange between virtual assets and fiat currencies;
- exchange between one or more other forms of convertible virtual assets;
- transfer of virtual assets;
- virtual asset custody service; or
- participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset.

3.2 What anti-money laundering provisions apply to cryptocurrencies?

Under the Proceeds of Crime Act (2020 Revision) and the Anti-Money Laundering Regulations (2020 Revision), and their applicable guidance notes (together, "the AML laws"), any person, formed, registered or based in the Cayman Islands conducting "relevant financial business" is subject to various obligations aimed at preventing, identifying and reporting money laundering and terrorist financing. VASPs must comply with the AML laws.

The requirements include (but are not limited to) the following:

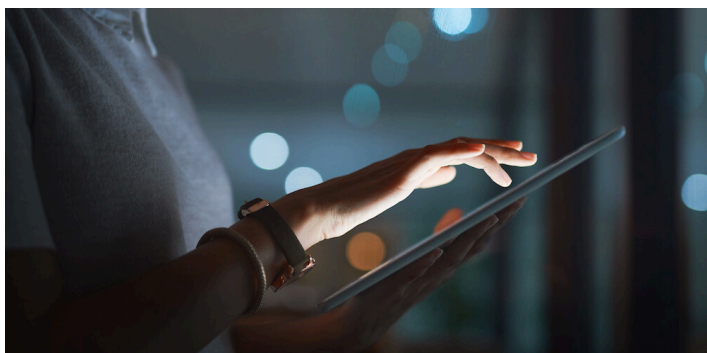
- appointing a managerial level employee as an AML compliance officer (who must be approved by the Cayman Islands Monetary Authority (CIMA) under the VASP Act);
- appointing a managerial-level employee as the money-laundering reporting officer and a deputy for the same; and
- implementing comprehensive procedures to ensure that clients are properly identified, risks assessed and requisite records maintained.

3.3 What consumer protection provisions apply to cryptocurrencies?

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