

The Virtual Assets Services Regime in the Cayman Islands

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The Cayman Islands Government and the Cayman Islands Monetary Authority (“CIMA”) have committed to developing a bespoke regulatory framework for the issue of virtual assets and for certain services related to virtual assets including services for trading and exchange. This framework will be implemented by the Virtual Asset (Service Providers) Law, 2020 (the “VASP Law”) of 25 May, 2020 and related legislation.

The VASP Law and other elements of the virtual assets regime will come into force by a phased roll-out. On 31 October, 2020 certain provisions of the VASP Law, the Monetary Authority (Amendment) (No. 2) Law, 2020, and the Securities Investment Business (Amendment) Law, 2020 came into force along with the Mutual Funds (Amendment) (No. 2) Law, 2020 and the Virtual Asset (Service Providers) Regulations, 2020 (the “Regulations”). This legislation comprises phase 1 of the virtual assets regime. An industry advisory published by the Ministry of Financial Services and Home Affairs on October 30, 2020 sets out the proposed time-line for the phased implementation of the remaining provisions of the VASP Law along with operational details concerning the licensing, registration and notification processes under the VASP Law.

Key features of the VASP Law

The VASP Law introduces a framework for the regulation of businesses which provide certain services relating to virtual assets. It does not impose restrictions on virtual assets themselves or limit the ability of any person to deal with virtual assets for his/her own account. If a person performs a relevant

service then the applicable licensing, registration, notification and reporting obligations contained in the VASP Law will apply to that person.

A “virtual asset” is defined as a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes. An entity that is incorporated or registered in the Cayman Islands which provides a virtual asset service as a business or in the course of business will be a ‘virtual asset service provider’ (a “VASP”) within the meaning of the VASP Law. “Virtual asset service” is defined as the issuance of virtual assets and/or the business of providing any of the following services or operations for or on behalf of another person or entity:

- 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, which is the business of safekeeping or administering of virtual assets or the instruments that enable the holder to exercise control over virtual assets; or
- participation in, and provision of, financial services related to a virtual asset issuance or the sale of virtual assets.

Under the VASP Law all virtual asset service providers are required to either: (i) register with CIMA under the VASP Law; (ii) in the case of a virtual asset custodian or operator of a

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virtual asset trading platform, hold a virtual asset service licence; or (iii) hold a sandbox licence (see below). In addition, any virtual asset service provider that is already licensed in the Cayman Islands under any other regulatory law may apply for a waiver from the licensing requirements of the VASP Law.

A sandbox licence is applicable to service providers who utilise an innovative service, technology or method of delivery (for whom a normal VASP licence is inadequate). This licence is available for a period of up to one year and allows CIMA to assess and regulate the relevant service. Following such assessment, CIMA may exempt the sandbox licensee from certain VASP requirements or impose additional requirements tailored to the specific activities.

The prior approval for CIMA is required for:

- the issue of shares (or equivalent ownership interests) in a VASP (where such issue represents 10 per cent or more of the total shares (or equivalent ownership interests) in that VASP); and
- the voluntary transfer or disposal of shares (or equivalent ownership interests) in a VASP.

Phased Implementation

The virtual assets services regime will be introduced in phases. Phase one brought into force the anti-money laundering (“AML”), counter financing of terrorism (“CTF”), compliance and supervision provisions of the VASP Law. Following this, on the 31 January 2021, the provisions which relate to enforcement, penalties and offences will come into effect. Persons engaged in or wishing to engage in virtual asset services should register with CIMA by that date or if any such person currently holds a licence granted by CIMA under another law, that person must notify CIMA of the nature and scope of the virtual asset service it wishes to carry on. CIMA has commented that applications should be made by 12 December 2020 in order to ensure that all applications are processed by the end of January 2021.

Phase two is currently set to begin in June 2021 when the remaining provisions of the VASP law will come into effect, including the licensing requirements for virtual asset custodians and trading platform operators and the provisions for sandbox licenses. Entities conducting custodial services or operating virtual asset trading platforms must register in phase one and will then need to apply for a licence.

Registration/Licensing Process and Associated Fees

The Virtual Asset (Service Providers) Regulations, 2020 set out the applicable fee schedule and the VASP registration form that is to be submitted on CIMA’s Regulatory Enhanced Electronic Forms Submission (“REEFS”) system. The forms and processes for licensing and waiver requests have not yet been published.

The Regulations set out the fees payable. A non-refundable CI\$ 1,000/US\$ 1,200 assessment fee must be paid when an application is submitted. Should an application be successful, an additional fee of between CI\$ 1,000/US\$ 1,200 and CI\$ 15,000/US\$ 18,000 will be payable depending on the type of virtual asset services and, if applicable, CIMA’s assessment of other factors including the nature, size and complexity of the services.

Statement of Principles

CIMA is expected to issue a Statement of Principles for VASPs in the near future which will set out principles applicable to the conduct of any virtual asset services in or from the Cayman Islands. In addition, CIMA has also stated that individual VASP entity rules, procedures and guidance will be issued as its understanding of the virtual asset sector develops.



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