

BVI to Introduce the Virtual Assets Service Providers Act

Authors: Christopher J.R. Page, Counsel | Eric Flaye, Counsel | Nicholas Kuria, Counsel

The British Virgin Islands (“BVI”) is proposing to introduce virtual assets service provider (“VASP”) legislation and has recently circulated a draft bill in the form of the Virtual Assets Service Providers Act, 2022 (the “VASP Act”) for industry consultation. Once enacted, this will introduce a new legal framework and registration regime for any BVI entity caught within scope of the VASP Act.

The VASP Act is being introduced to implement certain recommendations of the Financial Action Task Force and to demonstrate the BVI's continued commitment and responsiveness in meeting rapidly-changing international standards and best industry practice as they relate to cryptocurrencies and digital assets businesses. Whilst no clear enactment date has yet been fixed, it is understood that this will likely come into force before the end of 2022 or in early 2023. The VASP Act will include a transitional grace period of 6 months for an existing VASP to get duly registered by the BVI Financial Services Commission.

So what is a VASP?

- A **“VASP”** is defined to mean, subject to certain exclusions, a virtual asset service provider who provides, as a business, one or more of the following activities or operations for or on behalf of another person:
 - exchange between virtual assets and fiat currencies;
 - exchange between one or more forms of virtual assets;
 - 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
 - such other activities or operations as may be specified by the VASP Act or further regulations.
- A **“virtual asset”** is defined to mean 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:
 - digital representations of fiat currencies and other assets or matters specified by enactment or guidelines; or
 - a digital record of a credit against a financial institution of fiat currency, securities, or other financial assets that can be transferred digitally.
- A **“virtual asset service”** is defined to mean the business of engaging, on behalf of another person, in any VASP activity or operation (as outlined in the definition of “VASP”), 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 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, by enactment or guidelines, constitutes the carrying on of the business of providing virtual asset service or issuing virtual assets or being involved in virtual asset activity.

However, the VASP Act makes it clear that persons engaging in or performing the following activities shall not (without more) be treated as a VASP:

- providing ancillary infrastructure to allow another person to offer a service, such as cloud data storage provider 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 the provision of services like hardware wallet manufacturer or provider of unhosted wallets, 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, nonexchangeable, and which cannot be used for payment or investment purposes; or
- 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).

In addition, based on the current draft of the VASP Act, any BVI entity issuing tokens on a proprietary basis for its own account and behalf, would likely not be caught under the definition of a VASP and therefore not be subject to regulation under this new VASP Act.

BVI AML regime to include VASPs from 1 December 2022

More immediately, from 1 December 2022, any BVI entity falling within the definition of a VASP that is providing a “virtual asset service”, where the transaction in question involves virtual assets valued at or above US\$1,000, will need to comply with the BVI’s recently amended Anti-Money Laundering Regulations (as amended) and Anti-Money Laundering and Terrorist Financing Code of Practice (as amended).

This means that from 1 December 2022, a VASP will need to maintain client identification procedures, keep “know your client” and suspicious transaction records, establish internal reporting procedures for suspicious transactions, and have in place internal controls and communication procedures which are appropriate for the purposes of forestalling and preventing money laundering. The VASP will also be required to appoint an MLRO (money laundering reporting officer) and have in place adequate training for staff on their obligations under the law with respect to money laundering. Finally, the VASP will be required to comply with the new “travel rule” in relation to transfers of virtual assets which means that originating and beneficiary VASPs will need to obtain, verify, and maintain complete information on the originator and beneficiary of each transfer of virtual assets, before the transaction is executed or accepted. Intermediary VASPs have separate obligations requiring them to ensure that all information is complete and to detect any missing or incomplete information.

We will publish further details on the VASP Act once it has been finalised, but should you have any queries about the draft VASP Act in the meantime, please do reach out to any of us or your usual Conyers contact for further guidance on how these important changes may affect your digital assets business.

Authors:

Christopher J.R. Page
Counsel, Hong Kong
chris.page@conyers.com
+852 2842 9589

Eric Flaye
Counsel, London
eric.flaye@conyers.com
+44 (0)207 562 0341

Nicholas Kuria
Counsel, British Virgin Islands
nicholas.kuria@conyers.com
+1 284 852 1129

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For further information please contact: media@conyers.com