

Key factors for launching virtual assets business in BVI



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The British Virgin Islands (BVI) continues to attract virtual assets businesses seeking to capitalise on its status as a leading offshore financial centre. Unlike other jurisdictions that have either prohibited certain types of digital assets or imposed material restrictions on them, the BVI has become renowned as the jurisdiction of choice for clients wanting a cost-competitive and efficient route to market.

Although the BVI is currently developing a bespoke regulatory framework with respect to digital assets, the author predicts the BVI will continue to be very popular with fintech businesses in Asia and beyond for the issuance of non-fungible tokens (NFTs) and other digital tokens.

BVI advantages

The benefits and advantages of establishing virtual assets businesses in the BVI include:

- (1) Stability and reliability. As an autonomous British Overseas Territory that applies English common law rules and principles, it has a well-tested and efficient judicial system, with a final right of appeal to the Privy Council.
- (2) Incorporation and maintenance costs. BVI companies are cheap to incorporate and maintain in good standing. There were around 370,000 active BVI companies at the end of 2021, many of which are virtual assets businesses.
- (3) Tax neutrality. No income, corporate, capital gains or wealth taxes, withholdings or other similar taxes are imposed on BVI companies as a matter of BVI law.
- (4) Exchange controls. There are no exchange controls and restrictions as a matter of BVI law.
- (5) Confidentiality. Shareholders and directors of a BVI business company are generally a matter of private record.
- (6) Corporate flexibility. The objects, capacity and powers of a BVI company are generally unrestricted. Most decisions can be taken by the board of directors of the relevant company, with only certain matters requiring shareholder approval. There is considerable flexibility to tailor the memorandum of association and articles of association to meet a client's requirements.

The BVI has not developed a specific regulatory framework for virtual assets. Therefore, whether an entity will need to be licensed or registered with respect to its virtual assets-related activities in the BVI will be determined in accordance with existing financial services legislation.

Firstly, dealing, arranging deals in, or managing investments, providing investment advice, custodian

and/or administration services with respect to investments, and operating an investment exchange is regulated under the Securities and Investment Business Act (SIBA).

The BVI Financial Services Commission (FSC) has confirmed that a virtual asset, which is a medium of exchange to which no benefits or rights other than ownership attaches (such as a utility token enabling the holder to purchase goods and services), will generally not constitute an "investment" under the SIBA. Careful consideration will need to be given if any other benefits or rights are attached to the virtual asset as these will determine whether it then comprises an "investment".

Secondly, the Financing and Money Services Act (FMSA) regulates the business of international financing and lending in the peer-to-peer fintech market, including peer-to-business and business-to-business markets and the transmission of money in any form, including electronic money, mobile money or payments of money. The FSC has confirmed that the transmission of virtual assets and related products will not be caught by the FMSA. However, a virtual assets business that deals with fiat currency on behalf of customers should carefully consider its position under the FMSA.

Thirdly, the Banks and Trust Companies Act (BTCA) regulates "banking business" – which is defined as the "business of accepting deposits of money that may be withdrawn or repaid on demand or after a fixed period, or after notice, by cheque or otherwise, and the employment of such deposits, either in whole or in part, (1) in making or giving loans, advances, overdrafts, guarantees or similar facilities; or (2) the making of investments, (in each case) for the account and at the risk of the person accepting such deposits." A virtual assets business and/or exchange with activities that include dealing in or holding fiat currency should therefore ensure it is not inadvertently conducting "banking business" under the BTCA.

Finally, anti-money laundering (AML) legislation in the BVI requires "relevant persons" conducting "relevant business" (such as funds and providers of money transmission services) to establish certain AML policies and procedures. Although certain types of activities (such as ICOs of utility tokens) are unlikely to be caught by these regulations as they do not fall within the scope of investment business under the SIBA, directors should be mindful of the AML framework as a matter of good corporate governance – and as a way of future-proofing the business.

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