



Legal Updates

Legal Alert: Persons carrying on Business as Virtual Assets Service Providers Act in the BVI.

July 2023

The Virtual Assets Service Providers Act 2022 (the “**VASP Act**”) was enacted in the British Virgin Islands (“**BVI**”) on 1 February 2023. It creates the legal framework for the registration and supervision of Virtual Assets Service Providers (“**VASPs**”) operating in and from within the BVI.

Through the provisions of the VASP Act, the BVI Financial Services Commission (the “**BVI FSC**”) is established as the competent authority for the supervision of persons engaging in any virtual assets service.

For those persons who have been carrying on a virtual asset service prior to the coming into force of the VASP Act on 1 February 2023, the VASP Act allows a transitioning period of 6 months (ending therefore on 31 July 2023) within which they can either (1) submit an application to the BVI FSC to be registered as VASPs or (2) cease their VASP- related operations altogether.

Who is a Virtual Asset Service Provider?

By way of recap, the VASP Act defines a VASP as a virtual asset service provider who provides, as a business, a virtual assets service and is registered under the VASP Act to conduct one or more of the following activities or operations for or on behalf of another person:

- i. exchange between virtual assets and fiat currencies;
- ii. exchange between one or more forms of virtual assets;
- iii. 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;
- iv. safekeeping or administration of virtual assets or instruments enabling control over virtual assets;
- v. participation in, and provision of, financial services related to an issuer’s offer or sale of a virtual asset; or

- vi. perform such other activity or operation as may be specified in the VASP Act or as may be prescribed by regulations made by the BVI FSC in connection with the VASP Act.

A **virtual asset** is a digital representation of value that can be digitally traded or transferred, and can be used for payment or investment purposes, but specifically does not include the following:

- i. digital representations of fiat currencies and other assets or matters specified in the guidelines which have been, and may in the future be, published in conjunction with the VASP Act; or
- ii. a digital record of a credit against a financial institution of fiat currency, securities or other financial assets that can be transferred digitally.

Services Expressly Caught by the VASP Act

The following services have been included in a non-exhaustive list of virtual assets services and are, as such, regulated by the VASP Act when carried out on behalf of another person:

- (a) hosting wallets or maintaining custody or control over another person's virtual asset, wallet or private key;
- (b) providing financial services relating to the issuance, offer or sale of a virtual asset;
- (c) 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
- (d) engaging in any other activity that, under issued guidelines, constitutes the carrying on of the business of providing virtual asset service or issuing virtual assets or being involved in virtual asset activity.

Services Specifically Excluded from the Application of the VASP Act

Rather helpfully, the VASP Act also sets out a non-exhaustive list of some of the services which are specifically excluded from its remit and these are as follows:

- (a) 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;
- (b) providing service as a software developer or provider of un-hosted wallets whose function is only to develop or sell software or hardware;
- (c) solely creating or selling a software application or virtual asset platform;
- (d) providing ancillary services or products to a virtual asset network, including the provision of services like hardware wallet manufacturer or provider of un-hosted 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;

- (e) 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;
- (f) providing closed-loop items that are non-transferable, non-exchangeable and which cannot be used for payment or investment purposes; and
- (g) accepting virtual assets as payment for good or services (such as the acceptance of virtual assets by a merchant when effecting the purchase of goods).

Registration Requirement and Timeline

Any person who wishes to carry on in or from within the BVI the business of providing a virtual asset service must be registered with the BVI FSC. For those persons, however, who have been carrying on a virtual asset service prior to the coming into force of the VASP Act on 1 February 2023, the VASP Act allows a transitioning period of 6 months (ending therefore on 31 July 2023) within which they can either submit an application to the BVI FSC to be registered as VASPs, migrate away from the BVI, or cease their VASP-related operations altogether.

As the transitional framework period for VASP registration expires on **31 July 2023** all VASPs operating from the BVI who have not yet applied for registration/licensing with the BVI FSC need to act **NOW**.

Breaches of the VASP Act and Penalties

Penalties are listed in a schedule to the VASP Act and vary depending on the seriousness of the breach. However, by way of example, an entity which carries on virtual asset services without being registered under the VASP Act is liable on conviction to a fine of up to US\$100,000 and/or 5 years imprisonment (for any director, partner or senior officer who knowingly authorised, permitted, or acquiesced in the commission of the offence).

Further Assistance

This publication is not intended to be a substitute for specific legal advice or a legal opinion. If you require further advice relating to the Virtual Assets Service Providers Act, please contact us. We would be delighted to assist.

E: gary.smith@loebsmith.com

E: robert.farrell@loebsmith.com

E: elizabeth.kenny@loebsmith.com

E: peter.vas@loebsmith.com

E: cesare.bandini@loebsmith.com

E: vivian.huang@loebsmith.com

E: faye.huang@loebsmith.com

E: wendy.au@loebsmith.com

SERVING CLIENTS GLOBALLY



About Loeb Smith Attorneys

Loeb Smith is an offshore corporate law firm, with offices in the British Virgin Islands, the Cayman Islands, and Hong Kong, whose Attorneys have an outstanding record of advising on the Cayman Islands' law aspects and BVI law aspects of international corporate, investment, and finance transactions. Our team delivers high quality Partner-led professional legal services at competitive rates and has an excellent track record of advising investment fund managers, in-house counsels, financial institutions, onshore counsels, banks, companies, and private clients to find successful outcomes and solutions to their day-to-day issues and complex, strategic matters.

