

British Virgin Islands Regulator Issues Guidance on Regulation of Virtual Assets

On 13 July 2020, the Financial Services Commission (the "FSC") of the British Virgin Islands (the "BVI") issued welcome guidance¹ on the regulation of virtual assets in the BVI (the "Guidance"). The Guidance provides clarity and confirmation to the treatment of virtual assets and virtual asset-related activities, enabling virtual assets to be issued, held and traded with more certainty to their treatment under BVI law.

Certain types of virtual asset-related activity could constitute regulated investment business, which must be duly licensed in the BVI to be carried out.

The FSC have stated its position on virtual assets that their related products have value, exhibit the attributes of property and meet the definition of intangible property. As a result, when determining whether licensing is required for virtual asset-related activities in the BVI, an assessment of the following factors is relevant:

- (a) the way the virtual asset is being utilised;
- (b) the types of business activities being proposed or conducted;
- (c) whether the business activities are analogous with those conducted through traditional businesses; and
- (d) the characteristics and business activities (economic substance) relating to an offering / issuance.

Virtual asset products may be captured from a BVI regulatory perspective in one of two ways. First, when they are initially issued and second, when they are in the hands of a holder or the subject of an investment activity.

The Guidance clarifies that virtual assets and virtual asset-related products used as a means of payment for goods and services – for example, utility tokens which provide the purchaser with an ability to only purchase goods and services - would not be captured by existing BVI financial services legislation.

Where a virtual asset product or service provides a benefit or right beyond a medium of exchange, it may be captured under the BVI Securities and Investment Business Act (2013 Revision) (as amended) ("SIBA"). The Guidance provides a summary of a number of virtual asset-related products – including funds, Initial Coin or Token Offerings, and derivatives - and the FSC's views as to whether regulation is required under SIBA.

The Guidance is not meant to be exhaustive and where a virtual asset product is not mentioned in the Guidance, but exhibits a characteristic akin to a regulated activity under SIBA, the views and guidance of the FSC should first be secured before proceeding.

It is important that the Guidance is followed to prevent any violation of financial services laws as they relate to use of or trading in virtual assets in or from within the BVI. Any entities engaged in virtual asset-related activities should review the

¹https://www.bvifsc.vg/sites/default/files/guidance_on_regulation_of_virtual_assets_in_the_virgin_islands_bvi_final.pdf

Guidance and, where appropriate, obtain legal advice to ensure compliance with the FSC's position.

A compliance period of six months from the publication date of the Guidance (the "Compliance Period") is provided for a virtual asset-related entity which:

- (a) under any existing legislation outlined in the Guidance is conducting a regulated activity;
- (b) failed to submit an application in accordance with applicable legislation; and
- (c) submits an application within six months of the Guidance's publication.

The FSC reserves the right to take enforcement action where an entity is engaged in any regulated activity referred to in the Guidance and fails to submit an application for licensing within the Compliance Period.

If you would like further information or assistance, please reach out to your usual Maples Group contact or any of the contacts listed below.

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