

# Draft BVI Virtual Assets Service Providers Act Published

On 9 September 2022, the British Virgin Islands ("BVI") Government published a draft Virtual Assets Service Providers Act ("VASP Act") for consultation with industry. The draft VASP Act introduces a new, detailed registration and supervision framework for virtual assets service providers ("VASPs") operating in or from within the BVI, in keeping with the requirements of the Financial Action Task Force ("FATF").

The draft VASP Act sets out the virtual assets services that will require registration of a VASP with the BVI Financial Services Commission ("FSC"), the registration and ongoing requirements for VASPs, and broad supervisory powers for the FSC.

## Definitions of Virtual Assets Services

The virtual assets services and business activities that will require registration as a VASP under the draft VASP Act include:

- Virtual assets transactions;
- Providing financial services relating to the issuance, offer or sale of a virtual asset;
- Providing virtual assets custody services; and
- Operating a virtual assets exchange.

## Registration Requirements

The proposed registration requirements for VASPs include:

- A detailed business plan, written risk assessment and compliance manual;

- Details of how the VASP will handle client assets, custodian relationships and complaints;
- The proposed VASP, its directors, senior officers and persons with a significant or controlling interest being fit and proper persons; and
- Additional registration and ongoing requirements for providing virtual assets custody services or operating a virtual assets exchange.

A proposed VASP will also be able to take part in the FSC's regulatory sandbox if it wishes to carry on a virtual assets service and provide innovative FinTech in relation to the service.

The draft VASP Act includes a six month grandfathering period for existing providers of virtual asset services to apply for registration with the FSC.

## Ongoing Requirements

The proposed ongoing obligations for registered VASPs include:

- Having at least two individual directors one of whom is physically resident in the BVI (if required by the FSC, depending on the nature and risk associated with the VASP);
- Appointing an auditor to audit the VASP's financial statements, which must be submitted within six months of the end of its

financial year. Auditors will also have to report information to the FSC in certain circumstances;

- Appointing an authorised representative;
- Appointing a compliance officer and establishing compliance policies, systems and controls; establishing an internal audit function; and complying with various parts of the BVI Regulatory Code (As Revised);
- Compliance with the BVI Anti-Money Laundering Regulations (As Revised) ("AML Regulations") and the Anti-Money Laundering and Terrorist Financing Code of Practice (As Revised) ("Code of Practice"). Updates to the AML Regulations and Code of Practice were published in August 2022, including provisions relating to VASPs which come into effect on 1 December 2022;
- Notifying the FSC of any material change in information provided as part of the registration application and other detailed information on its operations;
- Prior written approval of the FSC for a change of name, appointment of a director or senior officer, or transfer of an interest in a VASP by a person with a significant or controlling interest (unless the VASP is listed on a recognised exchange); and
- Maintaining its business in a financially sound condition, segregation and protection of client assets, not issuing misleading advertisements relating to virtual assets and record keeping obligations.

## FSC Supervisory Powers

Broad powers are included for the FSC to supervise VASPs, together with offences and penalties of up to US\$100,000 and / or five years imprisonment for breach of the Act.

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<sup>1</sup> <https://www.bvifsc.vg/news/press-releases/consultation-virtual-assets-service-providers-act-2022>

## Conclusion

The draft VASP Act is a welcome addition to the BVI regulatory regime, in line with international standards for VASPs. A copy of the draft VASP Act is available on the FSC website<sup>1</sup> and comments can be made on it to the FSC until 23 September 2022. We will provide further updates once the VASP Act is finalised and adopted in the BVI.

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

### British Virgin Islands

#### Richard May

+1 284 852 3027

[richard.may@maples.com](mailto:richard.may@maples.com)

#### Chris Newton

+1 284 852 3043

[chris.newton@maples.com](mailto:chris.newton@maples.com)

#### Ruairi Bourke

+1 284 852 3038

[ruairi.bourke@maples.com](mailto:ruairi.bourke@maples.com)

### Dubai

#### Philip Ireland

+971 4 360 4073

[philip.ireland@maples.com](mailto:philip.ireland@maples.com)

### Hong Kong

#### Matt Roberts

+852 3690 7405

[matt.roberts@maples.com](mailto:matt.roberts@maples.com)

**London**

**Matthew Gilbert**

+44 20 7466 1608

[matthew@gilbert@maples.com](mailto:matthew@gilbert@maples.com)

**Fiona Chandler**

+44 20 7466 1709

[fiona.chandler@maples.com](mailto:fiona.chandler@maples.com)

**Singapore**

**Michael Gagie**

+65 6922 8402

[michael.gagie@maples.com](mailto:michael.gagie@maples.com)

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