

# Virtual Assets in the Cayman Islands Update

We are alerting clients to the following important developments to virtual assets regulation in the Cayman Islands:

1. The Virtual Asset (Service Providers) (Amendment) Act, 2024 (the "VASP (Amendment) Act");
2. The Cayman Islands Monetary Authority ("CIMA") Rule on Obligations for the provision of virtual asset services for Virtual Asset Custodians and Virtual Asset Trading Platforms (the "Rule");
3. The CIMA statement of guidance for the provision of virtual asset services for Virtual Asset Custodians and Virtual Asset Trading Platforms (the "Statement of Guidance"); and
4. The Virtual Asset (Service Providers) (Amendment) Bill, 2024 (the "VASP (Amendment) Bill").

## The VASP (Amendment) Act

The VASP (Amendment) Act was published on 19 December 2024 and is expected to be brought into force imminently by commencement order.

This VASP (Amendment) Act provides the regulatory basis for phase two of the Cayman Islands' Virtual Asset Service Provider ("VASP") regime, which relates to the introduction of a licencing regime for virtual asset trading platforms and virtual asset custodians.

Specifically, a currently registered person who at the commencement of the VASP (Amendment) Act is engaged in the provision of virtual asset custody services or the operation of a virtual asset trading platform shall apply for a licence within 90 days of the commencement of the VASP (Amendment) Act.

Additionally, the VASP (Amendment) Act introduces new operational requirements for all VASPs including:

- (a) **Directors:** VASPs must have at least three directors, including one independent director.
- (b) **Business Plan Changes:** VASPs must seek prior written approval from CIMA for any changes to their approved business plan or to provide additional virtual asset services not included in the original application.
- (c) **Litigation Notification:** VASPs must notify CIMA within 30 days of any litigation proceedings brought against them in any jurisdiction.
- (d) **Fiat Currency:** VASPs holding fiat currency on behalf of clients must do so in a bank regulated by CIMA or another regulator in a non-high-risk jurisdiction, ensuring segregation from the provider's own funds.
- (e) **Misleading Representations:** It is now an offence for VASPs to make or permit misleading representations about their virtual asset activities.

## Rule and Statement of Guidance

The Rule and Statement of Guidance will become effective on Order made by Cabinet commencing the VASP (Amendment) Act and are intended to ensure compliance, effective risk management and client protection in the provision of virtual asset services by virtual asset custodians and virtual asset trading platforms. Some key requirements of the Rule and Statement of Guidance are set out below.

## Governance

The governing body, i.e. Board of Directors or equivalent, of custodians and trading platforms must have individuals with the requisite skills, knowledge, and expertise and be assessed as fit and proper by CIMA. Governance arrangements must promote appropriate culture, corporate values, and behaviours, with documented roles and responsibilities for directors and senior officers. Periodic risk assessments must be conducted, considering risks such as cybersecurity, AML/CFT, sanctions, custody and data protection.

## Conduct of Business

Custodians and trading platforms must act honestly, fairly, and professionally in the best interests of their clients. Full and proper disclosure of operations, including fees, commissions, and conflicts of interest, is mandatory. Complaints handling procedures must be fair, consistent, and timely, with a log of complaints maintained for operational risk purposes.

## Prudential Requirements

Adequate risk-based capital must be maintained having regard to the size, scope, complexity and nature of the activities and operations of the custodian or trading platform and the type and level of risks to which the custodian or trading platform is exposed.

A recovery plan must be in place to address scenarios that could lead to a breach of capital requirements. Stress testing and insurance arrangements are required to manage risks and ensure business continuity.

## IT and Cybersecurity

Annual reviews of cybersecurity and IT risks must be conducted, with documented policies on incident response, disaster recovery, and business continuity. Roles and responsibilities for IT controls, information security, and private key management must be clearly defined.

## Virtual Asset Custody Service

Client assets must be protected and segregated from proprietary assets and VASPs must establish a custody policy with internal rules and procedures to ensure safekeeping. Reconciliation of client account balances must be performed frequently, with discrepancies investigated and resolved promptly. Industry best practices for the management of private keys must be implemented, including backup procedures and independent third-party security audits.

## Virtual Asset Trading Platforms

Systems and procedures must be in place to monitor and detect market abuse, with regular assessments to identify and mitigate risks. Trading platforms must advise clients of the option to seek third-party custodian services for asset protection. Pricing policies and listing rules must be transparent, with procedures for the efficient clearing and settlement of transactions.

## VASP (Amendment) Bill

Separately from the above developments, the Cayman Islands Ministry of Financial Services and Commerce on 24 December 2024 issued a draft VASP (Amendment) Bill for consultation. The VASP (Amendment) Bill proposes a limited scope carve-

out for the issuance of an equity interest (as defined under the Mutual Funds Act and the Securities Investment Business Act) or an investment interest (as defined under the Private Funds Act) from the definition of 'issuance of a virtual asset' or 'virtual asset issuance' in the current VASP regime.

The intent of the proposal is to exclude the tokenisation of an equity interest or an investment interest from characterisation as a regulated VASP activity. Maples Group will continue to track the VASP (Amendment) Bill as it develops.

## Further Assistance

Please contact us if you require regulatory advice or assistance meeting your obligations under the VASP (Amendment) Act and related Rule and Statement of Guidance.

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