



AML/CFT 101

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Virtual Assets - Regulatory safeguards being developed in the Caribbean



What are Regulatory safeguards?

Regulatory Standards are applicable to legislation, policies, and regulations in this case to Virtual Asset related activities.

Persons engaged in these activities should review their countries' specific guidance and ensure they adhere to their Regulatory Authority's position on the activities within its remit.

This would safeguard against any violation of financial services laws relating to use of or trading in Virtual Assets in or from within the jurisdiction.



Why are Regulatory safeguards necessary?

- Regulatory Safeguards are necessary because given the inherent nature of Virtual Assets, it is essential that countries to understand the risks and ensure the effective supervision of the sector.
- Virtual Assets and their proposed global networks and platforms, could potentially cause a shift in the Virtual Asset ecosystem and have implications for the ML/TF risks.
- “There are two concerns: mass-market adoption of Virtual Assets and person-to-person transfers, without the need for a regulated intermediary.
- Together these changes could have serious consequences for our ability to detect and prevent money laundering and terrorist financing.”*
- National authorities are responsible for implementing AML/CFT rules in their jurisdiction, through the relevant legislation.

**Source: Easy Guide to FATF Standards and Methodology- Virtual Assets: what, When, How?*



What is the FATF's view on Regulatory safeguards? (1)



- In June 2019, the FATF finalised amendments to its global Standards to clearly place AML/CFT requirements on virtual assets and Virtual Asset Service Providers (VASPs).
- The FATF also undertook a 12-month review in June 2020 to measure the implementation of the revised Standards by jurisdictions and the private sector, as well as monitoring for any changes in the typologies, risks and the market structure of the Virtual Assets sector.
- This proved to be a relatively short time-frame to fully understand the impact of the revised FATF Standards and how the Virtual Asset market has changed.
- Accordingly, the FATF has agreed to continue its focus on virtual assets and undertake the following actions.

What is the FATF's view on Regulatory safeguards? (2)



The FATF will:

- a) continue its enhanced monitoring of virtual assets and VASPs and undertake a second 12-month review of the implementation of the revised FATF Standards on virtual assets and VASPs by June 2021. By this time, jurisdictions will have had two years to transpose the revised FATF Standards on VASPs into law and the VASP sector will have had time to implement travel rule solutions globally;
- b) release updated Guidance on virtual assets and VASPs;
- c) continue to promote the understanding of ML/TF risks involved in transactions using virtual assets and the potential misuse of virtual assets for ML/TF purposes by publishing red flag indicators and relevant case studies by October 2020;
- d) continue and enhance its engagement with the private sector, including VASPs, technology providers, technical experts and academics, through its Virtual Assets Contact Group; and
- e) continue its program of work to enhance international co-operation amongst VASP supervisors.

*[*Source: 12-MONTH REVIEW OF THE REVISED FATF STANDARDS ON VIRTUAL ASSETS AND VIRTUAL ASSET SERVICE PROVIDERS](#)*

Types of Regulatory Safeguards

“Of the 32 jurisdictions which reported that they have a regulatory regime for VASPs, 31 of these have a supervisory regime. A range of different organisations have been designated as VASP supervisors, including financial services supervisors, central banks, securities regulators, tax authority and specialist VASP supervisors, and some jurisdictions have multiple supervisors.

Twenty-eight of these jurisdictions advised that they have allocated supervisory staff for VASP supervision and 25 reported that they were undertaking a risk-based approach to supervision of VASPs. Fifteen jurisdictions reported that they have already conducted on- and/or off-site inspections of VASPs and eight reported that they had imposed criminal, civil and/or administrative sanctions on VASPs for non-compliance with AML/CFT obligations.

This includes the cancellation, refusal of suspension of VASPs’ registrations, administrative sanctions to improve VASP compliance, public warnings, civil monetary penalties and criminal sanctions.”



*[*Source: 12-MONTH REVIEW OF THE REVISED FATF STANDARDS ON VIRTUAL ASSETS AND VIRTUAL ASSET SERVICE PROVIDERS](#)*



Regulatory safeguards in the Caribbean- Spotlight on the Cayman Islands (1)

- The Cayman Islands adopted a regulatory framework for virtual asset services called the Virtual Asset (Service Providers) Law 2020 ("VASP Law").
- It is mandatory for digital asset businesses to be registered with the Cayman Islands Monetary Authority (CIMA) and the law introduces the concept of a sandbox licence that provides CIMA with regulatory oversight of sandbox participants.
- Regarding the licensing of VASPs, prospective licensees must demonstrate that they have the necessary knowledge, experience, infrastructure and funding in line with the scope and complexity of the business. Licensed VASPs must also comply with anti-money laundering rules, prepare annual accounts and have a registered office in the Cayman Islands.



Regulatory safeguards in the Caribbean- Spotlight on the Cayman Islands (2)

The new framework further includes a regulatory sandbox regime, which allows new innovative services to be offered with certain restrictions without the need for a full licence. The sandbox licence allows the Cayman Islands Monetary Authority ([CIMA](#)) to tailor restrictions, monitor covenants, set limits on the offering of the service or specify obligations “to allow it to adequately supervise an innovative activity which uses new technology”.

The sandbox licence is intended to operate for a limited timeframe so that CIMA can assess how best to regulate the activities of the applicant and whether legislative changes may be required to further promote those activities.



Regulatory safeguards in the Caribbean- Spotlight on The Bahamas

- The Bahamas' parliament also passed the Digital Assets and Registered Exchanges Act 2020 (DARE) on November 3rd, 2020 which is aimed at establishing the framework for regulation of the issuance, sale and trade of digital assets in, from and within The Bahamas.
- The legislation facilitates the registration of digital token exchanges and the provision of services related to digital token exchanges. It also provides for the regulation of digital assets-based payment service businesses and for the registration of financial services related to the creation, issuance or sale of digital tokens and other digital assets.
- Source:
<https://www.bnamericas.com/en/features/spotlight-cryptocurrency-innovation-in-the-caribbean>



Regulatory safeguards in the Caribbean- Spotlight on the Virgin Islands (1)

- In the BVI, licensing, authorisation or approval is required for any activity stipulated under existing financial services legislation, unless specifically excluded.
- It is the Commission's position that virtual assets and its related products have value, exhibit the attributes of property and meet the definition of intangible property.
- When determining whether licensing is required for virtual asset related activities, an assessment of the following factors is relevant –
 - i. The way the virtual asset (crypto asset) is being utilised;
 - ii. The types of business activities being proposed or conducted;
 - iii. Whether the business activities are analogous with those conducted through traditional businesses; and
 - iv. The characteristics and business activities (economic substance) relating to an offering/issuance.

Source: BVI's Financial Services Commission Guidance on Regulation of Virtual Assets in the Virgin Islands

Regulatory safeguards in the Caribbean- Spotlight on the Virgin Islands (2)



Where an intermediary or activity is caught and requires a licence or certificate under the definition of “relevant business” in regulation 2 of the Anti-money Laundering Regulations, 2008, the regulated person must ensure its on-going compliance with those Regulations, including the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008; the Regulatory Code; and the Financial Services Commission Act, 2001 would be applicable.

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

Source: BVI's Financial Services Commission Guidance on Regulation of Virtual Assets in the Virgin Islands



Regulatory safeguards in the Caribbean- Spotlight on Bermuda

The Digital Asset Business Act (the “DABA”) came into force in September 2018. Since the DABA’s enactment, the Bermuda Monetary Authority (BMA) has promulgated rules, regulations, codes of practice, statements of principles and guidance in order to supplement the DABA, with the result that the DABA operates in a similar manner to the regulatory frameworks in place for other financial services regulated by the BMA.

In summary, the DABA specifies the digital asset-related activities to which it applies, imposes a licensing requirement on any person carrying on any of those activities, lays out the criteria a person must meet before it can obtain a licence, imposes (and permits the BMA to impose) certain continuing obligations on any holder of a licence, and grants to the BMA supervisory and enforcement powers over regulated digital asset businesses.

Regulatory safeguards in the Caribbean- Spotlight on Barbados

- The Financial Service Commission and the Central Bank of Barbados established a Regulatory Sandbox. Here companies can test their innovations in a controlled real-world environment while at the same time protecting other parties such as consumers and stakeholders from undue risk.
- The blockchain-based company Bitt Inc. is based in Barbados. Bitt Inc. entered the Barbados Regulatory Sandbox in November 2018 to provide a digital wallet that enables users to send, receive, and store mMoney (a digital representation of the Barbados dollar) as well as process other transactions (bill payments and mobile top ups) directly from their mobile device or PC.
- The product is currently restricted to the local market, with transactions occurring face-to-face through various agents. The entity, graduated from the Sandbox in July 2019 and will become eligible under the National Payments System Act when it is proclaimed, to apply to the Central Bank for a licence as a payment service provider that issues electronic money. As a result, mMoney does not qualify as a virtual asset in accordance with the FATF definition.



Regulatory safeguards in the Caribbean- Spotlight on Antigua and Barbuda

- Antigua and Barbuda's House of Representatives passed the Digital Assets Business Act 2020 on May 27th, 2020. The regulatory framework aims to regulate digital asset companies that establish their operations in Antigua and Barbuda and provide protection for both digital asset exchanges as well as their customers.
- Among the main clauses of the Act is the introduction of a tiered licensing system which requires all digital asset businesses to obtain a license for “issuing, selling, or redeeming virtual coins,” operating as a payment service, operating as an electronic exchange and for providing custodial wallet services.
- The Act gives the Financial Services Regulatory Commission (FSRC) oversight to enforce the legal framework among the relevant companies. Fines up to \$250,000 may be imposed for failure to comply with the legislation and additionally, there may be criminal charges for errant managers that could result in imprisonment.
- The Government of Antigua and Barbuda noted that in drafting the legislation, consultations were held with several industry members such as Ayre Group, nChain, Bayesian Fund, and the Bitcoin Association.



Regulatory safeguards in the Caribbean- Spotlight on Jamaica



Jamaica's Central Bank formally commissioned interested centralized digital channels (CBDC) providers to develop and test potential CBDC solutions in its Fintech regulatory sandbox in July 2020.

The Jamaican CBDC would only be tenable in Jamaica and would not legally be transferrable for cash, but it would be made available not just for government services payments or large wholesale commercial transactions, but also retail sales, bringing the Jamaican CBDC to street level adoption.

Regulatory safeguards in the Caribbean- Spotlight on St. Kitts and Nevis

On January 23rd, 2020, St Kitts and Nevis passed its Virtual Assets Act, which requires an application process for the registration of virtual asset businesses. St. Kitts and Nevis authorities also noted that, in order to ensure that criminals and their associates do not gain control of such entities, the Bill requires relevant information to be provided at the application stage, for due diligence to be conducted on the directors and shareholders of each Virtual Asset Service Provider (VASP) to determine whether they can be considered as fit and proper persons to operate such a business within the country.





Risks without Regulatory safeguards

- 1) Heightened potential for fraud – the fact that the products and those selling them may not be subject to regulation, may expose the investors to fraud.
- 2) Cross-border risks – the issuer of the VA may be operating from outside of the investor's jurisdiction, therefore, following the money or recovering invested funds, may prove extremely difficult for the investor.
- 3) Information asymmetry – investors may not be able to understand the risks, costs and expired returns arising from their investment.
- 4) Liquidity risks – In some jurisdictions, cryptocurrency exchanges may also be unregulated and operate without oversight. Thus leaving investors vulnerable to dramatic price changes and the possibility that they may not be able to exit their holdings (funds invested).
- 5) Persons should research whether their VA has or has not received the approval of the regulatory body in their jurisdiction to be safe.