

BVI FSC Guidance on Application for Registration of a Virtual Assets Service Provider

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1. Introduction

Virtual Assets Service Providers (“VASPs”) have been included in the regulatory remit of the Financial Services Commission (the “FSC”) with the passage of the [Virtual Assets Service Providers Act, 2022](#) (the “Act”). Accordingly, all persons who provide virtual assets services are subject to regulation and must complete the application process for registration.

2. Scope

2.1 For avoidance of doubt, the definition of “virtual assets” as set out within the Act is also applicable to persons providing digital assets as a business for or on behalf of another natural or legal person. Therefore, the provision of services that encompasses virtual assets, or engagement of activities to establish a Decentralised Finance platform, the sale of Non-Fungible Tokens, the operation of Peer-to-Peer financing platforms, or other novel concepts involving virtual assets may fall in scope of the Act only where they satisfy the definitions in the Act. Specifically, as prescribed in the Act, the following VASPs require registration:

- Operators of Virtual Assets Exchanges;
- Providers of Virtual Assets Custody Services; and
- Conducting business to provide other virtual assets services.

3. Objective

3.1 These Guidelines have been issued pursuant to section 41A of the Financial Services Commission Act, 2001. This Guidance is designed to ensure that Applicants seeking to be registered as VASPs are aware of all relevant information required for the submission of a complete application. It also provides clarity on the regulatory requirements that must be addressed for an application to be considered. The Guidance is to be read in conjunction with the VASP Application Form and the Act as well as other relevant legislation including those related to AML/CFT. Failure to submit a complete application will result in an application being rejected by the FSC.

3.2 VASPs are required to fulfil conditions (that are in line with existing regulatory requirements for licensing of financial services providers) to be registered by the FSC to operate as a VASP in or from within the Virgin Islands. During the application process, an Applicant must, amongst other things: **(i)** demonstrate a strong Corporate Governance Framework; **(ii)** provide details of a robust Technological Infrastructure; and **(iii)** submit detailed Compliance, Risk Management and Operational Frameworks. These requirements, which are further expanded in this Guidance, allow for an Applicant to demonstrate that it will be Fit and Proper to conduct the business for which registration is being sought.

3.3 Importantly, it is recognised that there may be VASPs in operation prior to the coming into force of the Act including those which may be authorised under existing legislation for other type of activities not related to the Act or covered under the exemption in section 44 of the Act. Section 40 of the Act provides a transitional period of six months from the date of coming into force for existing VASPs to apply to be registered. Consequently, all existing VASPs that have not submitted applications for registration to the FSC by 31 July 2023 will be considered to be conducting unauthorised business and subjected to the full enforcement mechanisms of the FSC.

4. The Application

4.1. Submitting a Complete VASP Application

4.1.1 A VASP seeking to be registered must submit a complete application form in accordance with sections 5 and 6 of the Act, along with relevant supporting documentation. The Applicant must ensure that all documents including those that evidence robust Corporate Governance, Risk Management, Compliance and Operational Frameworks have been submitted. The fillable form is available [here](#) on the FSC's website.

4.1.2 The PDF fillable VASP Application form is designed to allow users to provide all required and relevant information in one centralised document. The form includes information boxes to aide users by providing clarity to questions they may have. Users may click or hover over information boxes to read their contents.

4.1.3 Persons can click on any "Upload Here" button in the form to upload supporting documents as indicated. Uploads should always be in **PDF format**. All uploads can be viewed using the attachment icon (depicted as a paperclip) on the side panel of the application. Users are asked to select from the lists provided (where applicable). Users are also encouraged to use the checkboxes provided by clicking on each checkbox to select the desired choice.

4.1.4 Users should save the form once completed to ensure that all changes made are saved.

4.1.5 An application for registration as a VASP is considered complete where all required fields of the application form have been addressed and submitted along with the required supporting documentation and requisite application fee, as outlined in the table below. Applications will not be processed without the requisite fee. An application for registration as a VASP must be submitted by an Authorised Representative ("AR"), legal adviser or other local service providers such as registered agents. Fees listed below. An applicant applying to provide services in various categories will be required to pay the application fee for each.

4.1.6 Applications should be submitted to authorisation@bvifsc.vg.

VASP Applicant	Application Fee
VASP Applicant seeking to provide Virtual Assets Custody Service	\$10,000
VASP Applicant seeking to operate Virtual Assets Exchange	\$10,000
VASP Applicant not providing Virtual Assets Custody Service or Operating Virtual	\$5,000

4.1.7 Sections 27 and 30 of the Act specifically apply to applicants seeking to either provide a Virtual Assets Custody Service or operate as a Virtual Assets Exchange and must be considered in completing an application for registration.

4.2. Acting as an AR

4.2.1 The Act requires that all Applicants engage with a registered AR. A person seeking to be approved as an AR (registered or otherwise) under the Act is required to submit [Form D](#) of the Guidelines for Approved Person. All applicants for approval as ARs should demonstrate that they have sufficient knowledge and skills in VASP activities as required under section 12(2) of the Act. An AR is required to submit an application separately from that of the VASP.

4.3. Specific Information, Items and Documentation to Submit

4.3.1. Shareholding Structure

The ownership structure of the Applicant must be supported by a Register of Members together with an Ownership Structure Chart which evidences the breakdown of percentages held in the legal structure. In addition, the structure chart must evidence the full legal names of all natural and legal persons. It must also clearly set out the beneficial ownership of the Applicant. Where the ownership structure involves multiple corporate entities, partnerships or trusts, relevant document(s) evidencing of this and their complete ownership must be provided. This would include constitutional documents, register of members and directors and trust documents. Overly complex structures may lead to delays in the application process or application refusal if the structure obscures the Applicant's ownership and control.

4.3.2. Operational Provisions

- (a) Section 11 of the Regulatory Code, 2009 (the Regulatory Code) and section 6(1)(g) of the Act sets out the requirement for a detailed Business Plan. VASPs that are existing businesses prior to the coming into force of the Act must provide details of their current activities including size of business, number of clients and average transactions. The details provided should be sufficient for the FSC to be informed about the size of such business.
- (b) In the context of a VASP, the following elements are to be taken together with the provisions of section 11 of the Regulatory Code:
 - (i) *Effective Corporate Governance* – Applicants must demonstrate that there is sufficient and strong corporate governance mechanisms in place to protect the Applicant as well as its clients and customers. The Applicant's Board of Directors should demonstrate an appropriate mix of skills, knowledge and expertise intended to provide effective oversight and strategic direction of the VASP's operations. For avoidance of doubt, corporate directors are not permitted for VASPs.
 - (ii) *Capital & Reserves* – Applicants must demonstrate an adequate level of paid-up capitalisation for the nature of their operations. Capital adequacy for a VASP must, amongst other things, consider nature, size and complexity of the VASP and its operations. In reviewing adequacy of a VASP's proposed capital amounts, the FSC will give consideration to the inherent and operational risks associated with the VASP's business model. In essence, at the time of application, the VASP must be able to demonstrate that it has given due consideration to its business model and its operating factors such as anticipated monthly transaction volumes, customers' ability to utilise leverage, the holding of customer assets, asset liquidity and technology risk. Please note that the FSC considers the inherent and operational risks of VASPs in general to be comparative to and in many cases greater than that of securities brokers. However, VASPs which operate exchanges or provide custody services are viewed as presenting a higher level of risk and therefore the required capital would be higher.
 - (iii) *Technological Audits* – The methods for independent assurances of the VASP's technological infrastructure (such as, but not limited to smart contract defects, the underlying protocol's ability to scale, interoperability and code integrity/security) must

be disclosed and reports of audits that may have been undertaken be provided with the application. At a minimum, an appointed system auditor should retain the required expertise to be able to provide reports, which must be made available by the Applicant or VASP to the FSC, and include the following, depending on the services provided by the VASP:

- A. System testing methodologies, properties and limitations of scope;
- B. Testing results of the VASP's compliance and risk management controls, as well as verification of transaction capacity and integrity of the platform;
- C. Capacity stress testing based on the major strains imposed on the platform, including:
 - verification of how much volume the platform can handle before it is adversely impacted or shuts down and how much volume the system can handle before response time materially increases; and
 - assumptions applied and platform strain(s) identified;
- D. VASP's ability to identify and deal with the cause of customer complaints about access problems, system slowdowns, system outages, or other problems that may be related to capacity, analysis regarding the veracity of said complaints and any actions taken to prevent it from re-occurring;
- E. The VASP's ability to produce, upon request, a report showing monthly and yearly realised and unrealised profits and losses per customer;
- F. The VASP's ability to generate year-end reports for each customer showing the realised profits and losses incurred during the calendar year and the unrealised profits and losses on open positions;
- G. The VASP's ability to produce, upon request, time and price records covering all executed transactions such as those for the same currency pair, option, future or swap, during the time period in which the customer's order was or could have been executed;
- H. The VASP's ability to generate daily exception reports showing all price adjustments and all orders filled outside the price range displayed by the system when the order was placed;
- I. Confirmation of whether the VASP generates daily exception reports showing all price adjustments and all orders filled outside the price range displayed by the VASP when the order was placed;
- J. Review of slippage practices, policies and parameters, including commentary regarding any practices of asymmetric slippage (or any other manipulative prices) identified and whether slippage is based on real market conditions;
- K. Test of the VASP's continuity plans (for example, client's ability to initiate transactions during system outages, via secondary mechanisms like the telephone); and

- L. Confirmation of whether the trading system has sufficient capacity and integrity to handle the timely and efficient transmission and execution of customer orders.
- (iv) *Liquidity* – Applicants must demonstrate that they have made available or will have available, adequate liquidity reserves that allow for uninterrupted operations. Therefore, the VASP must submit a comprehensive funding and contingency funding plan which evidences how such liquidity will be achieved in normal operations and in times of market stress. Where liquidity or similar measures are achieved through a related entity (i.e., by common ownership, directorship, control, or similar arrangements) the applicant must demonstrate sufficient level of independence of that entity. The Applicant should also demonstrate that there is dedicated funding arrangements in place where, for example, a parent company is committed to multiple subsidiaries or affiliates. Note, it is the Applicant's responsibility to provide the necessary comfort to the FSC that the arrangements would be acceptable without elevating the level of risk. Where third party liquidity or clearing facilities are used, agreements should be in place and provided to the FSC. For market makers (self-clearing firms), evidence of dedicated funds or traded assets being held should be provided to the FSC. In any event, the VASP is expected to ensure that there is a continuous assessment of liquidity needs and commensurate levels of liquidity made available. For avoidance of doubt, this assessment should include anticipating liquidity needs resulting from new products.
- (v) *Risk Management Strategies* – The Applicant must set out its positions for managing all risk including legal, operational, concentration and compliance risks. These risk management strategies must also include measures to detect and mitigate illicit finance risks and should be supported by documentary evidence such as the Manual of Compliance and Internal Controls, the Risk Management Policy or other documentary evidence reflecting the proposed or established measures.
- (vi) *Consumer Protection Provisions* – The Applicant must ensure that it can demonstrate that disclosures to clients and other communications, including marketing efforts, will be fair, accurate, suitable/appropriate for clients, not misleading and clear. In addition, it is important to ensure that there is a clear and user-friendly Complaints Handling Procedure that addresses, at a minimum, provisions of section 69A of the Regulatory Code. In addition to the documentary evidence of the disclosures and other communications, the Applicant must also detail how those disclosures and other communications are intended to be communicated - whether on website or email or other means.
- (vii) *Related Parties & Public Disclosures* – The Applicant must have policies and procedures regarding the engagement and ongoing management of related parties' transactions and other third parties with whom it may engage to operate. These policies and procedures should include, inter alia, policies and procedures that guide the management of conflicts of interest or potential conflicts of interest; identification of and responsibilities for the oversight committee; details of what engagements will be published, to whom and the frequency of disclosures and internal limits for individual and aggregate exposures to related parties. All internal exposure limits should be consistent with the VASP's risk appetite. VASP will generally have to report annual on related party transactions including amounts and aggregate and how this impacts the VASP. In additional, the

Applicant should provide clear and accurate disclosure on how such information will be disseminated.

- (viii) *Custody and Safeguarding of Assets* – The Applicant must detail all arrangements for the safekeeping of clients’ assets including VA and fiat assets. The Applicant must provide evidence and details of systems and procedures in place including technology, must be able to demonstrate and evidence segregation of clients’ assets from that of the Applicant and must likewise be able to properly record and identify the assets or value of the aggregate assets (if assets are pooled) that are attributed to each client.
 - (ix) *Escrow and Lock-up Provisions* – Where applicable, an Applicant must provide information regarding proposed or existing Escrow Arrangements or other Lock-up Provisions for tokens held or issued by the Applicant or a related party.
 - (x) *Interoperability* – The Applicant must disclose whether it intends to build its functional capabilities to allow for interoperability with other VASPs. Additionally, where an Applicant intends to limit its engagement with other VASPs, this must also be disclosed.
 - (xi) *Cessation of Business and Living Wills* – The Applicant must be able to demonstrate that there is a mechanism and process in place should it need to cease business, whether by orderly winding-up or due to unknown events which would trigger a quick and immediate need for closure. A proper plan should be in place to ensure that orderly winding down includes the return of monies to customers/clients and other parties.
 - (xii) *Implementation of the Virtual assets transfer rules (I.e. Travel Rule)* – The Applicant must be able to demonstrate that it is able to fully comply with the virtual assets transfer rules in the Anti-Money Laundering and Terrorist Financing Code of Practice (AMLTF COP). VASPs may include this under their AML/CFT Framework.
- (c) Further, there are key disclosures required for a VASP to evidence that they have the requisite resources to satisfy the application process. These include: -
- (i) *Details of the Auditor* – The Applicant should take due care to appoint an Auditor that has experience and knowledge of the evolving best practices of accounting and auditing for VASPs and other innovative businesses that may fall in scope of the Act (per Schedule 1A of the Regulatory Code).
 - (ii) *Risk Assessment Framework* – The Risk Assessment Framework must sufficiently address all risks associated with the business to be conducted or services to be provided. Such assessment must include risk rating and monitoring of clients and transactions on an ongoing basis and in real time given the nature of VASP activities.
 - (iii) *Manuals of Compliance Procedures & Internal Controls* – An Applicant must also submit all documented policies and procedures outlining its internal controls and processes to ensure compliance with its regulatory obligations. Due regard must be given to money laundering and terrorist financing risks, as well as the risks of being used for illicit activities. Additional and separate Guidance has been provided as it relates to AML/CFT/PF risks identified with VASPs. Manuals submitted should also be on Procedures

and Controls and not only AML/CFT, but operational and internal control mechanisms as required by Regulatory Code.

- (iv) *Outsourcing Agreements* – Where an Applicant intends to outsource functions, the application must include draft Outsourcing Agreements. Where an Applicant seeks to outsource any function, it is important that a risk assessment of the third party is conducted. It is also important to define responsibilities, as well as establish systems to monitor the conduct of the outsourced function. This assessment must be provided with the application.
- (v) *Data Protection and Cybersecurity Framework* – The Applicant must document its Cybersecurity Framework to guard against cybersecurity threats. The FSC may require an Applicant to test its Cybersecurity Framework, and provide a report of the findings, prior to registration and at any time.
- (vi) *Statement of Technological Infrastructures* – A Statement of Technological Infrastructures must accompany all applications for registration as a VASP, setting out details of software, reliance on open-source codes, development of bespoke systems and other relevant details within this document.
- (vii) *Business Continuity Plan* – An Applicant will also be required to submit its Business Continuity Plan, developed in accordance with section 27 of the Regulatory Code.

4.3.3. Declaration

There are two declarations that must be completed for all VASP applications prior to submission. The first declaration must be completed by the Applicant's Authorised Representative or other representative submitting the application. The second declaration is to be completed by the Applicant. In both cases, persons must affirm that the information provided to the FSC in relation to an application is true and accurate. All persons signing the declarations made in relation to a VASP application are asked to carefully note that in accordance with section 37(1)(viii) and 54(1) of the FSC Act, 2001, providing false, inaccurate, or misleading information in respect of to that filing or application is an offence and may cause the FSC to deny the application and any subsequent applications which may be submitted on behalf of the Applicant. Additionally, enforcement action may be taken against the Applicant.

5. Other Regulatory Requirements

5.1 Based on the FSC's assessment of a complete application, a VASP may be required, as a condition of registration, to obtain professional indemnity insurance or similar arrangement as may be determined (i.e., surety bond or trust account). The VASP will first have to demonstrate that it has taken steps to secure PI and where this is not possible what other arrangements would satisfy the requirements. In addition, the FSC may require a Regulatory Deposit as a condition of registration.

5.2 All VASP applicants are also subject to requirements of all other relevant Competent Authorities within the Virgin Islands. Therefore, successful registrants and all relevant persons are expected to ensure that their compliance framework enables full cooperation and allows for timely reporting as applicable.

6. Additional Information

6.1 It should be noted that the FSC, in the exercise of its general powers reserves the right to seek clarification or request additional information on any application submitted for processing. Where such clarification is sought or a request for additional information is made, this information must be provided within 30 days, or any period of extension granted. Where the Applicant fails to respond to a request or submit the required documentation with the 30 days or the extension granted, the FSC would consider the application withdrawn. It is therefore essential that where, for any reason clarification sought or requested information is not available or cannot be provided, that fact is notified to the FSC as quickly as possible in order to enable the FSC to dispose of the application appropriately.

7. Processing of Application

7.1 Upon receipt of a completed application, the FSC will endeavour to process the application and provide initial comments within 6 weeks. The FSC's service standard requires that the application process be concluded within six months from the initial submission date. Timelines for review and approvals are dependent on quality of the application and information submitted within and in response to any subsequent request from the FSC.

8. General Ongoing Obligation

8.1 Upon the grant of Registration, all VASPs are required to ensure that the means under which they were granted registration are kept up to date. That is, for example, ensuring that it at all times remains fit and proper and specifically maintains adequate resources (human and technological) and appropriate policies, procedures and mechanisms in place to ensure compliance (giving consideration to any changes in the scope of business, identified risks, legislation, etc.). VASPs should also be mindful that prior approval of the FSC is required for certain changes, including changes in ownership/control and directors/senior officers. Furthermore, VASPs should pay attention to the obligation to notify the FSC of specific events, including changes which may impact the FSC's registration decision (i.e., notifications requirements of the AMLTFCOP and Regulatory Code).

8.2 Other ongoing obligations of VASPs include filing annual returns, filing annual financial statements and filing annual compliance officer reports. Failure to file these would result in enforcement action by the FSC including the levy of fines.