

The British Virgin Islands Virtual Assets Service Providers Act, 2022

Following our September 2022 [client advisory](#), the BVI Virtual Assets Service Providers Act, 2022 (the “**VASP Act**”) was enacted on 29 December 2022.

The BVI has become one of the leading jurisdictions for the establishment of virtual asset legal structures over recent years, and the enactment of the VASP Act demonstrates the BVI’s commitment to the virtual asset sector.

Virtual Assets

The VASP Act, which has yet to come into force, defines a “*virtual asset*” as a digital representation of value that can be digitally traded or transferred, and can be used for payment or investment purposes, but does not include (a) digital representations of fiat currencies and other assets or matters specified in the Guidelines (not yet published); or (b) a digital record of a credit against a financial institution of fiat currency, securities or other financial assets that can be transferred digitally. Accordingly, the definition of virtual asset is broad and will cover all types of crypto assets (including non-fungible tokens).

The VASP Act provides that a company may apply to the BVI Financial Services Commission (the “**FSC**”) to be regulated as a VASP in one or more of the following categories:

- (a) carrying on the business of providing a virtual assets service;
- (b) engaging in the business of providing a virtual assets custody service; and
- (c) operating a virtual assets exchange.

Virtual Assets Services

The VASP Act defines “*virtual assets service*” as the business of engaging, on behalf of another person, in any VASP activity or operation (as outlined in the definition of “*VASP*”), and includes:

1. hosting wallets or maintaining custody or control over another person’s virtual asset, wallet or private key;
2. providing financial services relating to the issuance, offer or sale of a virtual asset;
3. providing kiosks (such as automatic teller machines, bitcoin teller machines or vending machines) for the

purpose of facilitating virtual assets activities through electronic terminals to enable the owner or operator of the kiosk to actively facilitate the exchange of virtual assets for fiat currency or other virtual assets; or

4. engaging in any other activity that, under guidelines issued, constitutes the carrying on of the business of providing virtual asset service or issuing virtual assets or being involved in virtual asset activity.

The VASP Act further defines a “*VASP*” as a virtual asset service provider who provides, as a business, a virtual assets service and is registered under the VASP Act to conduct one or more of the following activities or operations for or on behalf of another person:

1. exchange between virtual assets and fiat currencies;
2. exchange between one or more forms of virtual assets;
3. transfer of virtual assets, where the transfer relates to conducting a transaction on behalf of another person that moves a virtual asset from one virtual asset address or account to another;
4. safekeeping or administration of virtual assets or instruments enabling control over virtual assets;
5. participation in, and provision of, financial services related to an issuer’s offer or sale of a virtual asset; or
6. perform such other activity or operation as may be specified in the VASP Act or as may be prescribed by regulations (none published to date).

It is important to note that the issuance by a BVI company of virtual assets is currently not included in the definition of virtual assets service.

The VASP Act also provides that a person who engages in or performs any of the following activities shall not qualify or be treated as a VASP:

1. providing ancillary infrastructure to allow another person to offer a service, such as cloud data storage provider or integrity service provider responsible for verifying the accuracy of signatures;
2. providing service as a software developer or provider of unhosted wallets whose function is only to develop or sell software or hardware;
3. solely creating or selling a software application or virtual asset platform;
4. providing ancillary services or products to a virtual asset network, including the provision of services like hardware wallet manufacturer or provider of unhosted wallets, to the extent that such services do not extend to engaging in or actively facilitating as a business any of those services for or on behalf of another person;
5. solely engaging in the operation of a virtual asset network without engaging or facilitating any of the activities or operations of a VASP on behalf of customers;
6. providing closed-loop items that are non-transferable, nonexchangeable, and which cannot be used for payment or investment purposes; and

7. accepting virtual assets as payment for goods and services (such as the acceptance of virtual assets by a merchant when effecting the purchase of goods).

The VASP Act also provides that a BVI business company that carries on, or holds itself out as carrying on or being able to carry on, a virtual assets service outside the BVI is deemed to be carrying on the business of providing a virtual assets service from within the BVI.

Virtual Assets Custody Service and Virtual Assets Exchange

The VASP Act sets out requirements for VASPs wishing to carry out virtual asset custody and exchange services including providing detailed information in respect of such activities in the regulatory application.

Virtual Assets Custody Service is defined as “the acceptance for safekeeping of virtual assets or instruments that enable a VASP to exercise control over the virtual assets or instruments”. A BVI company seeking to perform this activity will be required, in addition to other obligations imposed on a VASP (considered further below), to undertake the following functions:

- enter into safekeeping arrangements with the owner of the virtual asset and related instruments, with respect to matters such as the duration of the arrangement, fees payable, client access to the virtual assets, security and so on;
- source and adopt best practices in relation to information technology to be applied to the safekeeping of virtual assets; and
- ensure that any ancillary or subsidiary proceeds relating to virtual assets and related instruments accrue to the benefit of the owner of the virtual assets, unless otherwise agreed between the parties.

A virtual assets exchange is defined in the VASP Act as “a trading platform that is operated for the purpose of allowing an offer or invitation to be made to buy or sell any virtual asset in exchange for money or any virtual asset and which comes into custody, control, power or possession of, or over, any money or any virtual asset at any point in time during its course of business”.

We are anticipating that guidance and/or regulations to be published in due course which will provide further clarification on the operation of a virtual asset exchange.

Regulatory Sandbox

The VASP Act provides that a VASP that is engaged in the deployment of innovative fintech may be permitted to participate in the BVI’s regulatory sandbox, a light-touch regulatory framework that BVI entities may register under to trial their businesses for a limited time without needing to comply with the VASP Act.

Regulatory Application

To the extent any entity is carrying on a “virtual assets service” it will be subject to the following requirements (based on the VASP Act):

- to be registered under the VASP Act and to complete an application form / process which would include providing the FSC with (i) a detailed business plan; (ii) a risk assessment; (iii) a written manual showing how the Company intends to comply with the VASP Act and its AML/CFT obligations; (iv) details of the Company's internal safeguards and data protection systems; and (v) systems in place on how the Company will handle client assets, custodian relationships and complaints;
- to appoint an auditor and produce audited accounts which shall be provided to the FSC within six months of the financial year end of the Company;
- to have at least two individual directors (one of whom may be required by the FSC having regard to the nature and risk associated with the applicant to be a BVI resident director) and a local authorised representative (to act as a liaison with the FSC (amongst other things); and
- regulatory notification obligations / customer due diligence / segregation of customer assets / obtain prior consent of the FSC in respect of changes to the board of directors, ownership of the Company etc.

Transitional Period

The VASP Act provides for a transitional period of 6 months for an existing VASP to be registered with the FSC from the date of the coming into force of the VASP Act and, where the FSC receives an application within the time frame specified, the person carrying on the business of providing the virtual assets service may continue to provide such service until he or she receives notification from the FSC approving or refusing the application.

Conclusion

If you are operating a BVI entity in the virtual asset space, we recommend that you seek advice from your usual Campbells contact to determine whether you are operating as a VASP. If you think your BVI entity is likely to be a VASP, you should consider whether you need to be compliant with the BVI anti-money laundering regime and start your preparation for any applicable licensing requirements under the VASP Act.



Richard Spencer

Partner

+1 345 914 5835

rspencer@campbellslegal.com



Guy Williamson

Partner

+1 284 852 6157

gwilliamson@campbellslegal.com