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ATTORNEYS-AT-LAW

Client Memorandum

BRITISH VIRGIN ISLANDS REGISTRATION REGIME FOR VIRTUAL ASSET SERVICE PROVIDERS UNDER THE VIRTUAL ASSETS (SERVICE PROVIDERS) ACT

February 2026

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1. Introduction

1.1 The provision of virtual assets services as a business, in or from within the British Virgin Islands, is governed by the *Virtual Assets Service Providers Act (as revised)* ("**VASP Act**") (and associated guidance) and falls within the remit of the British Virgin Islands Financial Services Commission ("**Commission**"). The Commission is the body responsible for financial services regulation, including the application of anti-money laundering/combatting of terrorist and proliferation financing requirements to financial services providers.

2. Virtual Asset Services under the VASP Act

2.1 "*VASP*" means a virtual asset service provider who provides as a business a virtual assets service and conducts one or more of the following activities or operations for or on behalf of another person:

(a) exchange between virtual assets and fiat currencies;

(b) exchange between one or more forms of virtual assets;

(c) transfer of virtual assets;

(d) safekeeping or administration of virtual assets or instruments enabling control over virtual assets; and

(e) participation in, and provision of, financial services related to an issuer's offer or sale of a virtual asset.

2.2 The VASP Act defines a virtual assets exchange 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*'.

3. Virtual Assets – Definition

3.1 "Virtual asset" is defined in the VASP Act 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]; 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".*

4. Commission Application Fees

(a) virtual assets service (excluding virtual assets custody and virtual assets exchange) US$5,000 application fee.

(b) virtual assets custody service US$10,000 application fee.

(c) virtual assets exchange US$10,000 application fee.

5. Application Requirements

5.1 An applicant for a VASP Act registration is required to apply to the Commission using the prescribed form.

5.2 An applicant for registration shall not be registered unless the applicant has satisfied the Commission that the applicant's shareholders, directors and senior officers are fit and proper persons.[1]

5.3 In determining whether to approve a VASP registration application, the Commission will consider whether:

(a) an approval of the application is against the public interest;

(b) the applicant has satisfied the Commission that the applicant's beneficial owners and senior officers are fit and proper persons;

(c) the applicant has:

(i) personnel with the necessary skills, knowledge and experience;

(ii) adequate capital and cybersecurity measures,

as the Commission considers appropriate having regard to the size, scope and complexity of the business; and

(d) the applicant has complied with such other requirements under the VASP Act for which the Commission requests the applicant's compliance.

5.4 These heads of assessment are set out in the *BVI FSC Guidance on Application for Registration of a Virtual Assets Service Provider*[2]

[1] Schedule 1A of the Regulatory Code (as revised)
[2] https://www.bvifsc.vg/sites/default/files/guidance_-_application_for_vasp_registration_0_0.pdf

5.5 The Commission may impose conditions on an applicant for a registration under the VASP Act as the Commission may consider appropriate.[3]

6. Virtual Asset Custody Services

6.1 VASPs providing virtual asset custody services are required to:

(a) enter into safekeeping arrangements with the owner of a virtual asset and related instruments;

(b) source and adopt best practices in relation to information technology to be applied to the safekeeping of virtual assets and related instruments the VASP maintains on behalf of the owner;

(c) 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; and

(d) take such other measures as may be necessary to safeguard the virtual assets and related instruments held on behalf of third parties.[4]

7. Virtual Assets Exchange

7.1 The Commission may impose requirements on an applicant that operates a virtual assets exchange, including, but not limited to:

(a) the type of client that it may market its services to;

(b) the types of virtual assets that may, or may not, be traded on the virtual assets exchange;

(c) requirements for the listing of virtual assets;

(d) net worth and reporting requirements;

(e) price discovery mechanisms to prevent price manipulation and other unfair trading practices;

(f) disclosures to clients;

(g) the monitoring and supervision of trading activity;

(h) the technology used in the operation of the trading platform;

(i) the clearing and settlement process;

(j) the provision of financing for the purchase of virtual assets;

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[3] s. 7(3B), *VASP Act*.
[4] s. 29(2), *VASP Act*.

(k) controls to mitigate against money laundering, terrorist financing and proliferation financing; and

(l) any other requirement that the Commission considers to be in the best interest of persons investing on the exchange.[5]

7.2 An applicant operating a virtual asset trading platform may not:

(a) provide financing to its clients for the purchase of virtual assets unless it obtains approval of the Commission and disclosures are made to clients regarding the terms of, and the risk of, the financing;

(b) engage in trading or market making behaviour for its own account which could be detrimental to the interests of its clients unless these activities are necessary for the operation of the virtual assets exchange and these activities have been disclosed to the clients prior to trading;

(c) permit the trading of a virtual asset on its virtual assets exchange in a manner that is misleading or deceptive, or designed to defraud persons who subscribe for, or purchase, the virtual asset;

(d) allow a client to purchase or trade in virtual assets unless the licensee has assured itself that the client is aware of the risks of purchasing, holding or trading the virtual asset and has provided disclosures in a form that the client can understand; or

(e) provide fiat currency to fiat currency exchange services to users of the trading platform without written approval of the Commission.[6]

8. Application Form

8.1 The statutory application form requires detailed information and supporting documentation concerning, amongst other things, the applicant's:

(a) identity, legal structure, regulatory history (if any), internal management structure, systems and controls (business and anti-money laundering, counter terrorist, counter proliferation and sanctions and service providers;

(b) directors, senior officers and shareholders; and

(c) insurance (where required).

8.2 The Commission has also issued a guide on registration of a virtual assets service provider which further articulates application requirements and regulatory expectations. It typically takes the Commission up to 6 months to process a properly completed VASP registration application. Initial comments will be provided within 6 weeks.

See also: *Economic Substance* below.

[5] s. 32(1) *VASP Act*.
[6] s. 32(2), *VASP Act*.

9. Continuing Obligations

Regulatory Code

9.1. The Preliminary Part and Parts I, II and VII of the *Regulatory Code (as revised),* shall apply to a VASP.

Audited Financial Statements

9.2. All virtual assets service providers are required to submit a copy of their auditor's report in respect of the virtual asset service providers financial statements to the Commission within 6 months of the end of its financial year.

Notifications

9.3. All virtual asset service providers must notify the Commission:

(a) where there is a material change in the information provided to the Commission or any other change which is likely to materially affect the basis on which an applicant was approved and registered;

(b) within 21 days of an authorised representative ceasing to act; and

(c) within 14 days of the appointment of the auditor.

Commission Prior Approval - Share Transfers

9.4. A person owning or holding a significant interest or controlling interest in a VASP shall not, whether directly or indirectly, sell, transfer, charge or otherwise dispose of his or her interest in the VASP, or any part of his or her interest, unless the prior written approval of the Commission has been obtained[7].

Commission Prior Approval

9.5. All virtual asset service providers must seek the prior written approval of the Commission:

(a) to provide additional virtual asset services which were not included in the approved application; or

(b) to appoint a director or senior officer.[8]

Annual Fees

9.6. All virtual asset service providers must pay an annual renewal fee.

Restrictions

7 s 21(1) VASP Act
8 S11(3) VASP Act

9.7. A virtual asset service provider must not:

(a) engage in securities investment business unless it is a licensee or registered person in accordance with the *Securities and Investment Business Act (as revised)* ("**SIBA**") or has been exempted from licensing in accordance with SIBA;

(b) carry on virtual asset services outside of the information given in its approved application for registration.

Policies and Procedures

9.8. A VASP will be required to put in place and maintain a full suite of policies and procedures in order to comply with the applicable regulatory measures.[9]

Commission Inspection

9.9. Virtual asset service providers may be subject to periodic inspections by the Commission. Such inspections are conducted primarily for the purpose of assessing the virtual asset service providers compliance with the VASP Act and associated regulations and regulatory measures.[10] The Commission can impose administrative fines in accordance with the *VASP Act* and the *Anti-Money Laundering Regulations (as revised).*

10. AML/CFTP Requirements

The provision of virtual asset services when a transaction involves virtual assets of US$1,000 or more falls within the definition of "relevant business" under the *Anti-Money Laundering Regulations (as revised)* and therefore VASPs are required to comply with the *Anti-Money Laundering Regulations (as revised) and the Anti-Money and Terrorist Financing Code of Practice (as revised)* and must appoint a money laundering reporting officer and a compliance officer.

11. Tax Information Reporting

11.1 It will need to be considered in each case whether a VASP is a financial institution ("**FI**") for the purpose of the Foreign Account Tax Compliance Act ("**FATCA**") and Common Reporting Standard ("**CRS**") regime. A VASP with custody of client assets would for example be likely to be classified as an FI.[11]

11.2 The British Virgin Islands has also committed to implement the Organization for Economic Co-operation and Development's Crypto-Asset Reporting Framework ("**CARF**"), which is expected to take effect in the British Virgin Islands' regime from 2028.

11.3 CARF applies to a "Reporting Crypto-Asset Service Provider", which means any individual or entity that, as a business, provides a service effectuating "Exchange Transactions" for or on behalf of customers, including by acting as a counterparty, or as an intermediary, to such "Exchange Transactions", or by making available a trading platform. A Reporting

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[9] Your TTA client contact will be happy to assist with the preparation of such policies and procedures upon request.
[10] Your TTA client contact can assist with preparation for such inspections, upon request.
[11] Your TTA client contact can provide a FATCA/CRS analysis for a VASP, upon request.

Crypto-Asset Service Provider" will be required to report "Relevant Transactions" (i.e. any "Exchange Transaction" and any "Transfer of Relevant Crypto-Assets").

12. Economic Substance

12.1 The British Virgin Islands introduced economic substance requirements to implement the OECD BEPS 5 rules on 1 January 2019, under the *Economic Substance (Companies and Limited Partnerships) Act (as revised)* ("**ES Act**"). Under the ES Act, only a "relevant entity" doing a "relevant activity" is required to satisfy the economic substance test ("**ES test**").

12.2 British Virgin Islands entities within scope of the ES test have certain annual compliance reporting obligations to the International Tax Authority, as specified in the ES Act. Separately, for general ES Act purposes, <u>all</u> British Virgin Islands entities are required to make an annual classification/notification filing, via their registered office provider, indicating whether or not a "relevant activity" is being undertaken and if so, whether or not the entity is a "relevant entity".

12.3 In most cases, a virtual asset service provider will not be carrying on a relevant activity, but this will need to be assessed in each case.[12]

13. Penalties and Enforcement

13.1 A person who carries on, or purports to carry on, a virtual asset service in or from within the British Virgin Islands for which registration is required who is not a registered person or the holder of a waiver under the VASP Act, commits an offence and is liable on summary conviction to a fine of up to one hundred thousand dollars and to imprisonment for five years.

This client memorandum is intended to provide only general information for the clients and professional contacts of Travers Thorp Alberga. It does not purport to be comprehensive or to render legal advice. Please do not hesitate to contact Travers Thorp Alberga at any time if you have any specific questions or would like more detail on any of the points made in this memorandum.

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[12] Your TTA client contact can provide an economic substance assessment upon request.