

CAYMAN ISLANDS



VIRTUAL ASSET (SERVICE PROVIDERS) ACT

(2022 Revision)

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PART 1 - Preliminary

Short title and commencement

1. This Act may be cited as the *Virtual Asset (Service Providers) Act (2022 Revision)* and came into operation in accordance with the *Virtual Asset (Service Providers) Law, 2020 (Commencement) Order, 2020 [SL 137 of 2020]* and the *Virtual Asset (Service Providers) (Amendment) Act, 2020 (Commencement) Order, 2021 [SL 1 of 2021]*. Provisions not specified therein shall come into force on such date as the Cabinet may by Order specify.

Interpretation

2. (1) In this Act —
 - “**application fee**” means the fee that is payable by an applicant for registration or licensing under section 5(3);
 - “**assessment fee**” means the fee that is submitted with an application for registration or a licence to the Authority under section 5(1);
 - “**Authority**” means the Cayman Islands Monetary Authority established under section 5(1) of the *Monetary Authority Act (2020 Revision)* or such other authority as the Cabinet may by order appoint;
 - “**beneficial owner**” has the same meaning as in regulation 2 of the *Anti-Money Laundering Regulations (2020 Revision)*;

“**beneficiary**”, in relation to a transfer of virtual asset, means the natural or legal person or the legal arrangement that will own the virtual asset on completion of a transfer;

“**competent authority**” has the same meaning as in section 2 of the *Proceeds of Crime Act (2020 Revision)*;

“**existing licensee**” means a person that is licensed under any of the other regulatory laws and is not a virtual asset service licensee or a sandbox licensee under this Act;

“**fiat currency**” means currency that is issued by the relevant body in a country or by a government that is designated as legal tender in its country of issuance through, among other things, government decree or law;

“**Financial Action Task Force**” means the task force established by the Group of Seven to develop and promote national and international policies to combat money laundering and terrorist financing;

“**fintech service**” means a service that uses innovative technology to improve, change or enhance financial services but is not a virtual asset service;

“**fintech service provider**” means a person who is carrying on fintech service in or from within the Islands but does not provide virtual asset service;

“**issuance request**” means a request submitted to the Authority prior to a virtual asset issuance and containing such information as may be specified by the Authority;

“**issuance of virtual assets**” or “**virtual asset issuance**” means the sale of newly created virtual assets to the public in or from within the Islands in exchange for fiat currency, other virtual assets or other consideration but does not include the sale of virtual service tokens;

“**newly created virtual assets**” means virtual assets which have never been sold, offered or distributed to the public;

“**non high-risk jurisdiction**” means any jurisdiction that —

- (a) is not on the list of high risk jurisdictions subject to a call for action issued by the Financial Action Task Force; or
- (b) is not designated by the Cabinet as a jurisdiction which has serious deficiencies in its compliance with recognised international standards for combating money laundering and the financing of terrorism,

under the *Proceeds of Crime Act (2020 Revision)*;

“**obliged entity**” means a financial institution, person or group of persons that provides a virtual asset service that is licensed or registered and is supervised for virtual asset services by a government regulatory body in another non-high-risk jurisdiction;¹



“**operator**”, in relation to a virtual asset trading platform, means a person or group of persons that exerts effective control over the activities of a virtual asset trading platform however, in the absence of a single entity or group that exerts effective control over the platform, the operator shall be considered to be the owner of the entity under which the platform operates;

“**originator**”, in relation to a transfer of virtual asset, means —

- (a) the natural person, legal person or legal arrangement that places an order with the virtual asset service provider for the virtual asset transfer; or
- (b) where the transfer is carried out by a virtual asset service provider on behalf of a client or other third party, the client or third party who owned the virtual asset immediately before the transfer;

“**registered person**” means a person registered in accordance with section 6;

“**regulatory laws**” has the same meaning as in section 2 of the *Monetary Authority Act (2020 Revision)*;

“**sandbox licence**” means a licence that is granted in accordance with Part 3 of this Act;

“**securities investment business**” has the same meaning as in section 2 of the *Securities Investment Business Act (2020 Revision)*;

“**senior officer**” means a director, managing director, president, chief executive officer, partner, managing partner, general partner, ultimate partner, manager or someone who has a similar control function;

“**threshold**”, in relation to a virtual asset issuance, means a prescribed amount in fiat currency or equivalent that can be raised by the public issuance of virtual assets within a given timeframe by the virtual asset issuer;

“**transfer of virtual asset**” means any transaction carried out on behalf of an originator with a view to making the virtual asset available to a beneficiary;

“**virtual asset**” means 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 representation of fiat currencies;

“**virtual asset custodian**” means a licensee who provides virtual asset custody services in or from within the Islands;

“**virtual asset custody service**” means the business of safekeeping or administration of virtual assets or the instruments that enable the holder to exercise control over virtual assets;

“**virtual asset service**” means the issuance of virtual assets or the business of providing one or more of the following services or operations for or on behalf of a natural or legal person or legal arrangement —

- (a) exchange between virtual assets and fiat currencies;
- (b) exchange between one or more other forms of convertible virtual assets;

- (c) transfer of virtual assets;
- (d) virtual asset custody service; or
- (e) participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset;

“**virtual asset service licence**” means a licence granted under section 8;

“**virtual asset service provider**” has the meaning set out in section 3; and

“**virtual service token**” means a digital representation of value which is not transferrable or exchangeable with a third party at any time and includes digital tokens whose sole function is to provide access to an application or service or to provide a service or function directly to its owner.

- (2) For the purposes of this Act, “**virtual asset trading platform**” means a centralised or decentralised digital platform —

(a) which facilitates the exchange of virtual assets for fiat currency or other virtual assets on behalf of third parties for a fee, commission, spread or other benefit; and

(b) which —

(i) holds custody of or controls virtual assets on behalf of its clients to facilitate an exchange; or

(ii) purchases virtual assets from a seller when transactions or bids and offers are matched in order to sell them to a buyer,

and includes its owner or operator, but does not include a platform that only provides a forum where sellers and buyers may post bids and offers and a forum where the parties trade in a separate platform or in a peer-to-peer manner.

- (3) For the purpose of the definition of “**virtual asset trading platform**”, where a single entity or group that controls the platform cannot be identified, the operator of the platform shall be deemed the owner of the entity under which the platform operates.

Meaning of “**virtual asset service provider**”

3. (1) For the purposes of this Act, a person is a virtual asset service provider if the person is —

(a) a company incorporated under the *Companies Act (2022 Revision)*;

(b) a general partnership established under the *Partnership Act (2013 Revision)*;

(c) a limited partnership registered under the *Partnership Act (2013 Revision)*;

(d) an exempted limited partnership registered under the *Exempted Limited Partnership Act (2021 Revision)*;

(e) a foreign company registered under Part IX of the *Companies Act (2022 Revision)*;



- (f) a limited liability company formed and registered under the *Limited Liability Companies Act (2021 Revision)*; or
- (g) a limited liability partnership formed and registered under the *Limited Liability Partnership Act (2021 Revision)*,

and provides virtual asset service as a business or in the course of business in or from within the Islands and is registered or licensed in accordance with this Act or is an existing licensee that is granted a waiver by the Authority under section 16.

- (2) For the purposes of this Act, virtual service tokens are not virtual assets and a person or legal arrangement that provides services that involve virtual service tokens only are not required to have a licence or registration under this Act.

Registration or licence required

4. (1) Subject to subsections (2) and (3), a person shall not carry on, or purport to carry on, virtual asset service in or from within the Islands unless that person —
- (a) is a registered person;
 - (b) in the case of the provision of virtual asset custodial services or the operation of a virtual asset trading platform, holds a virtual asset service licence;
 - (c) is an existing licensee that has been granted a waiver from the Authority under section 16; or
 - (d) holds a sandbox licence,
- in accordance with this Act.
- (2) A natural person shall not carry on, or purport to carry on, in or from within the Islands virtual asset service as a business or in the course of business.
 - (3) For the purposes of subsections (1) and (2), a person purports to carry on virtual asset service where the person —
 - (a) uses one or more words that connote virtual asset service either in English or in any other language, in the description or title under which the person carries on business;
 - (b) makes a representation in a document or makes a representation in any other manner that the person is carrying on virtual asset service; or
 - (c) otherwise holds out as carrying on virtual asset service.
 - (4) A contract, transaction, obligation or instrument entered into by any person shall not be rendered unenforceable because it was entered into in connection with virtual asset service carried on by that person in contravention of subsection (1) or (2).

Fees

5. (1) An application for registration or a licence shall be accompanied by the prescribed non-refundable assessment fee under subsection (3).
- (2) On the Authority's decision to approve an application for registration or a licence, the Authority shall notify the applicant of its approval and the applicant shall pay the application fee as may be specified by the Authority.
- (3) The application fee shall be such amount that is payable by an applicant for registration or licensing after assessment and approval of the application by the Authority, such fee being within the prescribed range and determined by the Authority based on, but not limited to, the nature, size, scope and complexity of the virtual asset service or fintech service set out in the application less the assessment fee.
- (4) The application fee shall be paid by the applicant no later than thirty days after being notified of the fee by the Authority and where the fee is not paid the approval shall be cancelled by the Authority.
- (5) A licensee or a registered person shall, on or before 15th January in each year, pay the prescribed renewal fee and there shall be payable by a licensee or registered person who fails to pay the renewal fee by that date a surcharge of one-twelfth of that fee for every month, or part of a month, after 15th January in each year that the fee is not paid.
- (6) The licence or registration in respect of which the renewal fee remains unpaid for three full months after 15th January in any year shall lapse immediately but if, within a period of one month after the date of lapse, the person who held the licence or registration prior to its lapse pays —
- (a) the prescribed renewal fee;
 - (b) the surcharges due under subsection (5); and
 - (c) an administration fee of ten per cent of the renewal fee,
- the licence or registration may be renewed for the period from 1st January to 31st December, inclusive, of the year in question.
- (7) The Authority may, for good cause, waive any additional fee imposed under subsection (5).
- (8) If the prescribed renewal fee referred to in subsection (5) is not paid on or before the 15th day of January in each year, the unpaid annual fee may be sued for by the Crown by action as a civil debt and the Crown may require, and the court may order, the payment of any penalties accrued in respect of the late payment of the fee.



Part 2 – Registered persons and virtual asset service licensees

Registration

Application for registration

6. (1) Subject to subsection (3), a person, not being an existing licensee, who —
- (a) at the commencement of this Act is carrying on virtual asset service for which a licence is not required under this Act; or
 - (b) wishes to carry on virtual asset service for which a licence is not required under this Act,
- shall apply in the prescribed form to be a registered person under this Act and submit the application along with the prescribed assessment fee to the Authority.
- (2) The Authority in determining whether to approve the application from a person in subsection (1), shall consider —
- (a) the matters set out in section 22; and
 - (b) whether —
 - (i) the applicant should apply instead for a virtual asset service licence or a sandbox licence as the virtual asset service is one for which a licence is required; or
 - (ii) the applicant should apply instead for registration or a licence under one of the other regulatory laws as the virtual asset service is similar in nature to an activity or service for which registration or a licence is required under another regulatory law and for which supervision under this Act is not required.
- (3) The Authority shall, further to its determination under subsection (2) that the applicant is suitable to be registered, register the applicant upon payment of the application fee or reject the application for registration if the applicant is found to be unsuitable.
- (4) Where an application for registration has not been approved, the Authority shall notify the applicant of its decision and the reasons therefor.
- (5) An applicant for registration or a registered person shall notify the Authority within fifteen days of any changes to the information provided under subsection (1) that occurs after submission of the application.
- (6) If a registered person engages in activities for which a licence is required under this Act, the Authority shall cancel the registration and require the registered person to apply for a licence.
- (7) A registered person shall not publicly state, imply or convey that it is licensed or regulated in the Islands.

- (8) An application under this section shall include such information as may be prescribed and any information that the Authority requires in order to make a determination.
- (9) A person who contravenes subsection (5) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

Registered person: virtual asset issuance

7. (1) A registered person shall not issue virtual assets directly to members of the public in excess of the prescribed threshold.²
 - (1A) A registered person shall, prior to issuing virtual assets, submit an issuance request to the Authority in the prescribed form and obtain the approval of the Authority prior to the issuance.³
 - (2) Where a virtual asset issuance is within the prescribed threshold and involves the transfer or exchange of virtual assets or fiat currency, a registered person shall maintain records containing such information as may be specified by the Authority for every transaction of the issuance involving the public and the registered person shall make the records available to the Authority when requested.
 - (3) Notwithstanding subsections (1), (1A) and (2), a registered person may, in accordance with subsection (4), engage one or more virtual asset trading platforms that are obliged entities or licensed under this Act for the issuance of newly created virtual assets over the prescribed threshold and the virtual assets shall be issued by way of these virtual asset trading platforms.⁴
 - (4) A registered person under subsection (3) shall, prior to engaging an obliged or licensed virtual asset trading platform for the issuance of newly created virtual assets, submit a virtual asset issuance request to the Authority in the prescribed form and obtain the approval of the Authority.

Virtual asset service licence

Application for virtual asset service licence

8. (1) A person who —
 - (a) wishes to provide virtual asset custody services or wishes to operate a virtual asset trading platform;
 - (b) at the commencement of this Act is providing or operating any of the services referred to in paragraph (a);
 - (c) is an existing licensee under this Act and has been directed by the Authority to obtain a virtual asset service licence; or
 - (d) is providing virtual asset service and has been directed by the Authority to obtain a virtual asset service licence,may apply for a virtual asset service licence in the prescribed form.



- (2) The Authority shall, in relation to an application received under subsection (1), either —
 - (a) grant a virtual asset service licence;
 - (b) direct the applicant to apply for a sandbox licence in accordance with section 19(1);
 - (c) direct the applicant to apply for a licence under one of the other regulatory laws where the virtual asset service is similar in nature to a service for which registration or a licence is required under another regulatory law and for which supervision under this Act is not required; or
 - (d) refuse the application to grant the licence.
- (3) An application under this section shall include such information as may be prescribed and any additional information as may be specified by the Authority that enables it to make a determination and the application shall be accompanied by the prescribed assessment fee.
- (4) The Authority in determining whether to approve the application from a person in subsection (1), shall consider the matters set out in section 22 and whether —
 - (a) an approval of the application is against the public interest;
 - (b) the applicant has —
 - (i) personnel with the necessary skills, knowledge and experience;
 - (ii) facilities, books, records and accounting systems;
 - (iii) adequate capital and cybersecurity measures,as the Authority considers appropriate having regard to the size, scope and complexity of the business; and
 - (c) the applicant has complied with such other requirements under this Act for which the Authority requests the applicant's compliance,and where the Authority is satisfied, it shall notify the applicant of its approval of the application and the application fee under section 5(3).
- (5) On payment of the application fee, the Authority shall grant the licence to the applicant and the licence shall set out the specific service under subsection (1) that the licensee is permitted to carry on.
- (6) Where the Authority has granted a licence under this section, it shall, as soon as reasonably possible after the grant, publish notification of such grant in the Gazette.
- (7) Where an application for a licence has not been approved, the Authority shall notify the applicant of its decision and the reasons therefor.
- (8) The Authority may impose —
 - (a) regulatory requirements on a virtual asset service licensee as the Authority considers necessary based on —

- (i) its assessment of the virtual asset service provided by the licensee;
 - (ii) the nature of the supervision required for the virtual asset service;
 - (iii) the safety and soundness of the method by which the virtual asset service is offered to the public; or
 - (iv) where applicable, any licence held under another regulatory law; and
- (b) further restrictions or prohibitions on the use of technology or practices that, in the opinion of the Authority, may disrupt or prejudice —
- (i) the functions of the Authority;
 - (ii) the interests of the public; or
 - (iii) the financial services in the Islands.
- (9) The Authority shall maintain a current register of licensees setting out the business address of the licensee and details of the activities that the licensee is permitted to carry on and such other information as may be prescribed.
- (10) A licensee or an applicant for a licence shall notify the Authority within fifteen days of any changes to the information provided under subsection (3) that occurs after submission of the application.

General requirements for virtual asset service providers

9. (1) The Authority may, at the virtual asset service provider's expense, require a virtual asset service provider to provide an auditor's report, prepared by an independent auditor, on the anti-money laundering systems and procedures for compliance with the *Anti-Money Laundering Regulations (2020 Revision)*.
- (2) A virtual asset service provider shall prepare accounts annually and make the accounts available for inspection upon request by the Authority at the registered office at such reasonable time as the Authority may specify.
- (3) A virtual asset service provider shall —
- (a) ensure that —
 - (i) its senior officers and trustees are fit and proper persons to hold the respective positions; and
 - (ii) its beneficial owners are fit and proper persons to have such control or ownership;
 - (b) take such steps as may be necessary to protect and secure the personal data and virtual assets of its clients;
 - (c) ensure that all communications relating to the virtual asset service are accurate;
 - (d) comply with the *Anti-Money Laundering Regulations (2020 Revision)* and other laws relating to the combating of money laundering, terrorist financing and proliferation financing;



- (e) for the purpose of ensuring compliance with the *Anti-Money Laundering Regulations (2020 Revision)*, put in place anti-money laundering systems and procedures; and
 - (f) designate an employee as the officer with responsibility for the procedures for combating money laundering, terrorist financing and proliferation financing.
- (4) A virtual asset service provider shall —
- (a) have a registered office in the Islands;
 - (b) provide documents, statements or such other information that may be required by the Authority to enable it to properly perform any of its functions under this Act;
 - (c) notify the Authority of —
 - (i) any licence or registration in another jurisdiction;
 - (ii) the opening of an office or establishing a physical presence in another jurisdiction;
 - (iii) any penalties that are imposed or enforcement actions taken against it in another jurisdiction; or
 - (iv) the holding of, or the acquisition of, a controlling interest in another person or legal arrangement engaged in virtual asset service; and
 - (d) provide such other information as may be specified by the Authority.
- (5) When performing a transfer of virtual assets, a virtual asset service provider shall collect and maintain information on the beneficiary and originator of the transfer in accordance with the *Anti-Money Laundering Regulations (2020 Revision)* and any additional information specified by the Authority, for all transfers performed and comply with any other requirements outlined therein and the records shall —
- (a) be made available, at the request of the Authority or any competent authority, through its registered office; and
 - (b) where a request for information is made under paragraph (a), be provided within forty-eight hours of receipt of the request.
- (6) A virtual asset service provider shall not engage in securities investment business unless the person is registered or is a licensee under the *Securities Investment Business Act (2020 Revision)* or has been exempted from registration or licensing by the Authority under the *Securities Investment Business Act (2020 Revision)*.⁵
- (7) The Authority may impose additional requirements specific to a virtual asset service on a virtual asset service provider to ensure compliance with the *Anti-Money Laundering Regulations (2020 Revision)*.
- (8) A virtual asset service provider shall not appoint —

- (a) a senior officer or trustee; or
 - (b) an anti-money laundering compliance officer,
without the prior approval of the Authority.
- (9) The Authority shall not grant the approval specified in subsection (8) where a senior officer, trustee or anti-money laundering compliance officer is not a fit and proper person.
- (10) For the purposes of this section, “**accounts**” include unaudited reports.
- (11) A person who contravenes subsections (1) and (8) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

Requirements: virtual asset custody services

- 10.** (1) The Authority may, where necessary, impose requirements on a licensee that provides virtual asset custody services including —
- (a) net worth requirements;
 - (b) reporting requirements;
 - (c) disclosures to clients concerning the transparency of operations including the risks associated with the custodial arrangements, internal safeguards, the methods of access to virtual assets held and insurance arrangements;
 - (d) requirements for the safekeeping of client assets, including the segregation of assets, insurance requirements and cybersecurity measures; and
 - (e) any other requirement the Authority determines is in the best interest of the beneficial owners of the assets held by the licensee.
- (2) A virtual asset custodian shall not, unless specifically agreed to by the beneficial owners of the virtual assets —
- (a) encumber; or
 - (b) have encumbered by a third party,
virtual asset deposits held on behalf of clients.
- (3) A virtual asset service licensee that is providing virtual asset custody services shall —
- (a) enter into a custodial arrangement with the owner of a virtual asset listing at a minimum —
 - (i) the manner in which the virtual assets are to be held;
 - (ii) the transactions that the custodian is permitted to engage in and the manner in which the transactions are to be conducted;
 - (iii) disclosures relating to the risks present in the safekeeping of the virtual assets and any mitigating factors;
 - (iv) fees, spreads or other remuneration to the custodian;



- (v) the manner in which the client may access the virtual assets and how the custodial arrangement may be terminated;
 - (vi) information related to the licensee's security safeguards;
 - (vii) remedies available to the owner upon the unforeseeable loss of the virtual assets by the custodian; and
 - (vii) any other information specified by the Authority;
- (b) maintain information technology best practices relating to virtual assets held in custody;
 - (c) ensure that all ancillary or subsidiary proceeds relating to virtual assets held in custody shall accrue to the benefit of the owner of the virtual asset unless otherwise agreed to with the owner in writing;
 - (d) take such steps as may be necessary to safeguard the virtual assets held on behalf of third parties; and
 - (e) have adequate safeguards against theft and loss.
- (4) A licensee providing virtual asset custody services shall comply with applicable requirements under this section and a person who contravenes this provision commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

Requirements: virtual asset trading platforms

11. (1) The Authority may, where necessary, impose requirements on a licensee that operates a virtual asset trading platform including —
- (a) the nature of the access of users to the platform;
 - (b) the type of client that it may market its services to;
 - (c) the types of virtual assets that may, or may not, be traded on the virtual asset trading platform;
 - (d) requirements for the listing of virtual assets;
 - (e) net worth and reporting requirements;
 - (f) identification and management of conflicts of interest and price discovery mechanisms to prevent price manipulation and other unfair trading practices;
 - (g) disclosures to clients concerning the transparency of operations of the virtual asset trading platform including disclosures to clients on custodial arrangements and insurance against theft or loss of assets;
 - (h) the monitoring and supervision of trading activity that is taking place on the virtual asset trading platform and the freezing and suspension of trading of virtual assets;

- (i) the technology used in the operation of the trading platform including information on the resiliency of the platform and cybersecurity safeguards in place;
 - (j) the clearing and settlement process for transactions between buyers and sellers of virtual assets;
 - (k) the provision of financing for the purchase of virtual assets;
 - (l) controls to mitigate against money laundering, terrorist financing and proliferation financing; and
 - (m) any other requirement that the Authority considers to be in the best interest of the users of the virtual asset trading platform.
- (2) A licensee that operates a virtual asset trading platform shall not —
- (a) provide financing to its clients for the purchase of virtual assets unless 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 asset trading platform and these activities have been disclosed to the clients of the platform;
 - (c) allow a virtual asset to be traded on its platform unless it has assured itself that the virtual asset is not presented in a deceiving manner or in a manner that is meant to defraud holders of funds or value;
 - (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.
- (3) The licensee shall carry out reasonable due diligence procedures on virtual assets and their issuers that are listed on the platform.
- (4) A licensee who is operating a virtual asset trading platform shall apply to the Authority, in the prescribed form, for approval prior to engaging in securities investment business which relates to virtual assets.
- (5) On receipt of an application for approval under subsection (4), the Authority shall determine whether registration or an additional licence is required under the *Securities Investment Business Act (2020 Revision)* and shall notify the applicant accordingly.
- (6) In making a determination under subsection (5), the Authority shall assess whether the virtual asset trading platform —
- (a) engages in, offers or facilitates securities investment business;



- (b) lists or facilitates the issuance of securities which are virtual assets in accordance with the *Securities Investment Business Act (2020 Revision)*; and
 - (c) whether any additional supervision is required under the *Securities Investment Business Act (2020 Revision)*.
- (7) The Authority may grant approval for the application under subsection (4) where it considers that the activity is adequately supervised under this Act and no additional supervision is required under the *Securities Investment Business Act (2020 Revision)* and may impose additional regulatory requirements specific to the activity carried out by the licensee.
- (8) A licensee operating a virtual asset trading platform shall comply with the applicable requirements under this section and section 12 and a person who contravenes this provision commits an offence and is liable conviction to a fine of one hundred thousand dollars.

Issuance request

- 12.** (1) Subject to subsection (3), and where permitted under the terms of the respective licence, a licensee who operates a virtual asset trading platform may issue virtual assets on its own behalf directly to the public over the prescribed threshold by submitting a virtual asset issuance request to the Authority and seeking approval from the Authority prior to the issuance.
- (2) A virtual asset trading platform that is licensed under this Act may issue virtual assets on behalf of a virtual asset service provider directly to the public over the prescribed threshold where —
- (a) it is permitted under the terms of its licence; and
 - (b) the virtual asset service provider which is creating the virtual assets for the issuance has obtained approval for the issuance.
- (3) On approval of an issuance which is over the prescribed threshold, the Authority may impose requirements in relation to —
- (a) the method by which the issuer may solicit members of the public to participate in the issuance;
 - (b) the information provided to the public relating to the issuance including the disclosures of material risks associated with the virtual asset, use of funds and terms and conditions of the issuance;
 - (c) the information that the licensee is required to collect from members of the public who participate in the issuance; and
 - (d) the reporting requirements that are specific to the issuance and the intervals by which the information is to be provided to the Authority,
- and the licensee or any person acting on the licensee's behalf shall comply with these requirements.

- (4) A licensee who issues virtual assets directly to the public shall not —
 - (a) make any false, misleading or deceptive representations or omissions; or
 - (b) engage in fraudulent activity.
- (5) If a licensee operating a virtual asset trading platform which is facilitating the issuance of newly created virtual assets on behalf of a virtual asset service provider knows, or has reasonable grounds to believe, that the virtual asset issuance does not comply with any applicable requirements, the licensee shall immediately give the Authority written notice of its knowledge or belief, with reasons.
- (6) A person who contravenes subsection (5) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

Directions to apply for licence

Directions to apply for licence under this Act

13. (1) The Authority may require an existing licensee to apply for a licence under this Act where the existing licensee is engaged in virtual asset service that is determined by the Authority to be an activity that requires a licence under this Act and is materially different from the business activity for which it is licensed under another regulatory law and requires specific supervision under this Act.
- (2) The licence under this Act shall be in addition to the licence held by the existing licensee under another regulatory law.

Directions to apply for a licence under another regulatory law

14. The Authority may require a virtual asset service provider to apply for a licence under any of the other regulatory laws, where the registered person or licensee is carrying on business activity —
 - (a) that is materially similar to business activity for which there is a licensing regime under the other regulatory laws that provides sufficient oversight and supervision for that business activity and, on approval of the licence under one of the other regulatory laws, the Authority shall cancel the registration or revoke the licence under this Act; or
 - (b) that requires additional oversight that is provided for under a licensing regime under the other regulatory laws and requires that the registered person or licensee apply for the additional licence.

Existing licensee

Notice by existing licensee

15. (1) An existing licensee who wishes to carry on virtual asset service shall notify the Authority, in the manner specified by the Authority, advising of the nature and scope of the virtual asset service that the existing licensee wishes to carry on.



- (2) Subject to section 16, the Authority, in reviewing a notice from an existing licensee shall make a determination regarding whether the existing licensee is —
 - (a) to be granted a waiver for registration or licensing under this Act in accordance with section 16;
 - (b) to apply for a virtual asset service licence;
 - (c) to apply for a sandbox licence;
 - (d) to apply for a licence under one of the other regulatory laws; or
 - (e) to cease providing the virtual asset service.
- (3) The Authority in reviewing a notice under this section shall take into consideration the matters set out in section 22.
- (4) An applicant shall provide such information that the Authority considers necessary to make a determination under this section.
- (5) A notice under this section is not required where an existing licensee is carrying on activities that involve virtual service tokens only.
- (5A) An existing licensee shall comply with any relevant provisions of this Act as the Authority may require.⁶
- (6) An existing licensee who fails to provide notice under subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

Waiver

- 16.** (1) Notwithstanding any other provision under this Act, the Authority may waive the requirement for a licence or registration under this Act for an existing licensee where the Authority determines that —
- (a) the virtual asset service does not materially change the nature of the activity for which the existing licensee is licensed; and
 - (b) the supervision and oversight carried out in relation to the business of the existing licensee is sufficient to include the virtual asset service.
- (2) An existing licensee who receives a waiver under this section shall notify the Authority within fifteen days of any change to the information provided in the notice under section 15(1).
- (3) Notwithstanding the grant of a waiver to an existing licensee, the existing licensee shall comply with any relevant provisions of this Act as the Authority may require.

Part 3 – Sandbox licensees

Principles relating to sandbox licences

17. Sandbox licensees shall comply with the sandbox principles of —
- (a) honesty;
 - (b) integrity;
 - (c) fair treatment of customers;
 - (d) the protection of customer data and assets; and
 - (e) such other principles as the Authority may prescribe by way of regulations and publish on the Authority’s website.

The sandbox licence

18. (1) A sandbox licence is a temporary licence granted for a period of up to one year and shall be subject to review at such time as the Authority may determine is appropriate.
- (2) The Authority shall assess, monitor and supervise the innovative service, technology or method of delivery of a sandbox licensee with a view to ensuring that —
- (a) the service, technology or method of delivery complies with the principles under section 17;
 - (b) the service, technology or method of delivery improves the provision of financial services in the Islands;
 - (c) the service, technology or method of delivery complies with global standards and best practices for combating money laundering, terrorist financing and proliferation financing;
 - (d) the adoption of new financial services practices and technologies within the Islands is facilitated; and
 - (e) best practices and guidance are developed for the virtual asset service sector.

Application for a sandbox licence

19. (1) The Authority may require —
- (a) a person applying to be registered or a registered person; or
 - (b) a person applying for a virtual asset service licence or a virtual asset service licensee,
- to apply, instead, for a sandbox licence where the Authority determines that —
- (i) the virtual asset service represents an innovative use of technology or uses an innovative method of delivery that requires supervision



and oversight that is not offered by a licence or registration under this Act or any other law;

- (ii) it is in the best interest of the public, existing licensees, licensees, registered persons or the financial markets for the virtual asset service to be temporarily restricted or for specific requirements to be placed temporarily on the provision of the virtual asset service;
- (iii) the virtual asset service uses or promotes technology or method of delivery that may create systemic risk to the financial markets or otherwise to the jurisdiction; or
- (iv) the virtual asset service poses a money laundering, terrorism financing or proliferation financing risk that is not properly mitigated by the *Anti-Money Laundering Regulations (2020 Revision)* or this Act,

and the Authority shall cancel the registration or revoke the virtual asset service licence where it has required the person to apply for a sandbox licence.

- (2) A person under subsection (1) who has been directed by the Authority to apply for a sandbox licence shall do so in the manner specified by the Authority and shall provide such additional information in support of that application as the Authority may specify.
- (3) A fintech service provider may, but is not required to, apply for a sandbox licence in such manner as may be specified by the Authority.
- (4) An existing licensee who has provided notice and has been directed by the Authority to apply for a sandbox licence shall do so in the manner specified by the Authority.
- (5) An applicant for a sandbox licence shall pay the prescribed assessment fee at the time of submission of the application and the application fee as may be specified by the Authority within thirty days of notification of approval for a licence.
- (6) Where the sandbox application fee remains unpaid within thirty days of notification, the Authority shall cancel its approval of the sandbox licence.
- (7) An applicant for a sandbox licence shall provide such additional information in support of the application as the Authority may specify.
- (8) The Authority in reviewing an application under this section shall take into consideration the matters set out in section 22.

Compliance with applicable requirements

- 20. (1) Subject to subsection (2), a sandbox licensee that is a virtual asset service provider shall comply with all requirements applicable to virtual asset service providers in this Act.

- (2) The Authority, where it grants a sandbox licence, may —
- (a) impose any of the requirements that are applicable to a virtual asset service licensee;
 - (b) impose restrictions that the Authority considers necessary to effectively supervise, monitor and assess the virtual asset service or fintech service and such restrictions may relate to —
 - (i) the technologies or activities that may be provided;
 - (ii) a limit on the number or type of clients to whom the virtual asset service or fintech service may be offered;
 - (iii) a limit on the value or amount of virtual asset service or fintech service offered to clients;
 - (iv) the imposition of reporting requirements at such intervals as the Authority may require;
 - (v) restrictions on the sandbox licensee’s advertising; or
 - (vi) requirements for disclosures to be made to clients;
 - (c) exempt the sandbox licensee from requirements that are applicable to virtual asset service providers or modify any requirement in such manner as the Authority considers appropriate;
 - (d) require that specified technical or operational functions relating to the fintech service or the virtual asset service be maintained in the Islands to facilitate the supervision of the service by the Authority; or
 - (e) require a sandbox licensee who is a virtual asset service provider to comply with the requirement under section 31(1),
- and every imposition, exemption or modification by the Authority shall be in writing.
- (3) Where a requirement is imposed or an exemption or a modification is granted under subsection (2), the Authority may impose such conditions that it considers appropriate.
- (4) The Authority shall not impose a requirement or grant an exemption or modification under subsection (2) unless it is satisfied that it is appropriate to do so.
- (5) The Authority may remove a requirement, revoke an exemption or vary any modification granted under this section and shall notify the sandbox licensee in writing of its decision and the reason for its decision.
- (6) Notwithstanding its powers under subsection (2), the Authority may, where it has made a determination, take any action necessary, where the Authority is of the opinion that the action is necessary for the protection of clients or potential clients and in the interest of the public.



- (7) Before taking any such action under subsection (6), the Authority shall notify the sandbox licensee, in writing, of the actions to be taken and provide its reasons for pursuing such action.
- (8) A sandbox licensee served with a notice under subsection (7) may, within a period of twenty-eight days from the date of the receipt of the notice, make written representations to the Authority and where such representations are made, the Authority shall take them into account in deciding whether to take the proposed action but the Authority shall not be prevented from taking action before the written representations are made.
- (9) Where a licensed fintech service provider refers to its licence in any material that is published, distributed or otherwise made available to the public, the fintech service provider is required to state that the licence is a sandbox licence under this Act.

Authority may amend, extend or revoke

- 21.** (1) The Authority may —
- (a) amend the terms of or the restrictions on the sandbox licence;
 - (b) extend the duration of the sandbox licence;
 - (c) where the Authority determines that —
 - (i) the sandbox licensee who is a virtual asset service provider has contravened the *Anti-Money Laundering Regulations (2020 Revision)*; or
 - (ii) the virtual asset service provided by a sandbox licensee poses a material risk to the welfare of the public and the stability of the financial services in the Islands,without prior notice, revoke the sandbox licence and require the licensee to cease providing the virtual asset service in or from within the Islands;
 - (d) revoke a sandbox licence and require the virtual asset service provider to apply for registration or a virtual asset service licence under this Act instead; or
 - (e) revoke a sandbox licence and require the virtual asset service provider to apply for a licence under another regulatory law.
- (2) The Authority may immediately revoke a sandbox licence held by a fintech service provider at any time by providing notice in writing to the sandbox licensee where —
- (a) the licensee fails to comply with a requirement relating to its licence; or
 - (b) the Authority, in the performance of its functions under section 18(2), no longer considers the sandbox licence necessary.

- (3) A fintech service provider who holds a sandbox licence may choose to surrender the licence at any time by providing notice to that effect to the Authority.

Part 4 - Decisions to licence, register, approve issuances

Decisions by the Authority to licence or register

22. The Authority, in making a decision to grant a virtual asset service licence or a sandbox licence, to register an applicant or to waive a requirement to licence or register under this Act shall consider the following —
- (a) the size, scope and complexity of the virtual asset service, underlying technology, method of delivery of the service and virtual asset utilised;
 - (b) the knowledge, expertise and experience of the applicant;
 - (c) the procedures that the applicant has in place to combat money laundering, terrorist financing and proliferation financing;
 - (d) the internal safeguards and data protection systems being utilised by the applicant;
 - (e) the similarity of the virtual asset service to securities investment business as defined under the *Securities Investment Business Act (2020 Revision)* or to any other regulated activity under any of the other regulatory laws;
 - (f) the risks that the virtual asset service may pose to existing clients, future clients, other licensees or to the financial system of the Islands;
 - (g) whether the virtual asset service business involves the offering of virtual asset custodial services or the operation of a virtual asset trading platform;
 - (h) the net worth, capital reserves and financial stability of the applicant;
 - (i) the impact that the virtual asset service may have on financial services in the Islands;
 - (j) the likelihood that the service will promote innovation, competition and benefits to consumers;
 - (k) except for an applicant that is a fintech service provider, the applicant's ability to comply with this Act and the relevant requirements of the *Anti-Money Laundering Regulations (2020 Revision)*;
 - (l) the applicant's senior officers and trustees are fit and proper persons to hold the respective positions;
 - (m) the applicant's beneficial owners are fit and proper persons to have such ownership or control; and
 - (n) the applicant has paid the assessment fee.



Decisions by the Authority to approve issuance of virtual assets

- 23.** (1) In determining whether to approve the issuance of virtual assets pursuant to a request from a licensee or a registered person, the Authority shall consider the following —
- (a) the nature of the virtual asset;
 - (b) whether the virtual asset interferes with the functions of the Authority relating to anti-money laundering, combating of terrorist financing and anti-proliferation financing;
 - (c) whether the issuance is harmful to critical or systemically important entities, persons or processes, the local or global financial services markets or the public generally;
 - (d) whether the virtual asset is a security as defined by the *Securities Investment Business Act (2020 Revision)*;
 - (e) the function and purpose of the virtual asset, and if applicable, the nature of any underlying asset which the virtual asset may represent or may be a derivative of;
 - (f) whether the virtual asset service provider wishes to solicit the public directly for the purchase of the virtual assets;
 - (g) the total number of virtual assets that will be issued and available for purchase by the issuance and the amount to be raised in the issuance;
 - (h) the period of time during which the issuance will take place;
 - (i) whether the virtual assets will be issued by way of an obliged virtual asset trading platform or a virtual asset platform which is licensed under this Act;
 - (j) the anti-money laundering processes utilised by or available to the virtual asset issuer;
 - (k) the accuracy and completeness of disclosures to be made to the public regarding the issuance of virtual assets; and
 - (l) any other considerations that the Authority considers relevant.
- (2) The Authority shall notify the virtual asset issuer who submitted the issuance request of its decision within twenty-one days of receipt of the issuance request.

Part 5 – The Authority: powers and enforcement**Powers and duties of the Authority**

- 24.** (1) The Authority shall —
- (a) maintain a general review of the provision of virtual asset services in the Islands, including taking reasonable measures to identify persons,



- including natural persons, who are providing these services in contravention of this Act, and submit an annual report of this review to the Cabinet;
- (b) be responsible for supervision and enforcement in respect of virtual asset service licensees, sandbox licensees and registered persons to whom this Act applies and for the investigation of persons where the Authority reasonably believes that they have contravened the licence or registration provisions in this Act;
 - (c) whenever the Authority considers it necessary, examine, the affairs or business of any virtual asset service provider by way of the receipt of regular returns, on-site inspections, auditor's reports or in such other manner as the Authority may determine, for the purpose of —
 - (i) assessing whether a virtual asset service provider is undertaking its authorised activities in accordance with this Act;
 - (ii) confirming that the *Anti-Money Laundering Regulations (2020 Revision)* are being complied with;
 - (iii) confirming that a licensee is in a sound financial position;
 - (iv) assessing whether a licensee's cybersecurity safeguard measures are sufficient to protect client information and assets; or
 - (v) carrying out any other functions of the Authority;
 - (d) ensure that fintech and virtual asset services are offered in a manner that accords with the public interest and is conducive to the growth of the financial services industry; and
 - (e) monitor regulatory requirements and the supervisory needs of virtual asset service providers and make recommendations to the Ministry regarding changes to the regulatory laws with a view to ensuring that the regulatory laws provide an effective framework for the supervision of virtual asset services and regulated activities that include the use of virtual assets.
- (2) The Authority may, in writing, authorise any other person to assist it to carry out its functions under this Act.
- (3) A person who knowingly or recklessly provides any information to the Authority which is false or misleading in a material respect commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for six months.
- (4) The Authority may, by Order, provide for the listing of newly created virtual assets.



Enforcement powers of the Authority

- 25.** (1) Without prejudice to any other action that may be instituted or taken against a virtual asset service provider, if at any time it appears to the Authority that a virtual asset service provider has failed to comply with any of the requirements under this Act, the Authority may, by written notice, direct the virtual asset service provider to comply with the requirement within such period of time and on such terms and conditions as the Authority may specify and the virtual asset service provider shall comply with the notice.
- (2) The Authority may take any of the steps listed in subsection (3) if it knows, or has reasonable grounds to believe, that a virtual asset service provider —
- (a) is, or appears likely to become, unable to meet its obligations as they fall due;
 - (b) is carrying on business fraudulently or otherwise in a manner detrimental to the public interest, to the interest of its clients or to the interest of its creditors;
 - (c) has contravened any provision of this Act, or of any regulations made hereunder, or of the *Anti-Money Laundering Regulations (2020 Revision)*;
 - (d) has failed to comply with a condition of the respective licence or registration;
 - (e) has not conducted the direction and management of its business in a fit and proper manner;
 - (f) has senior officers, trustees or persons who have acquired ownership or control who are not fit and proper persons;
 - (g) is a “corporate services provider”, as defined in Part XVIIIA of the *Companies Act (2022 Revision)*, Part 12 of the *Limited Liability Companies Act (2021 Revision)* or Part 8 of the *Limited Liability Partnership Act (2021 Revision)*, and has contravened that Part; or
 - (h) has failed to comply with a lawful direction from the Authority.
- (3) The Authority may —
- (a) revoke the virtual asset service licence or a sandbox licence or cancel the registration;
 - (b) impose conditions or further conditions upon the licence or amend or revoke any such conditions;
 - (c) apply to the court for any order which is necessary to protect the interests of clients or creditors of the licensee or registered person;
 - (d) publish in the Gazette and in any official publications of the Authority, a contravention by any person of this Act, of any regulations made hereunder or of any lawful direction issued by the Authority;

- (e) at the expense of the virtual asset service provider, require the licensee or registered person to obtain an auditor's report on the licensee's anti-money laundering systems and procedures for compliance with the *Anti-Money Laundering Regulations (2020 Revision)*;
 - (f) require the substitution of any senior officer or trustee of the virtual asset service provider whenever appointed, or the divestment of ownership or control;
 - (g) in the case of a reasonable belief that the virtual asset service provider has contravened the *Anti-Money Laundering Regulations (2020 Revision)*, report the same to the Director of Public Prosecutions;
 - (h) require such action to be taken by the virtual asset service provider as the Authority reasonably believes necessary for the purposes of dealing with the circumstances referred to in paragraphs (a) to (g);
 - (i) in the case of a virtual asset service provider who is also regulated or supervised for virtual asset services in another jurisdiction, notify the relevant regulator or government entity in the respective jurisdictions of the failure to comply with the directive of the Authority;
 - (j) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to the Authority thereon; or
 - (k) at the expense of the licensee, appoint a person who shall be known as the Authority's appointed controller, to assume control of the licensee's affairs who shall, subject to necessary modifications, have all the powers of a person appointed as a receiver or manager of a business appointed under section 18 of the *Bankruptcy Act (1997 Revision)*.
- (4) Where the Authority decides to take action under subsections (3)(a) to (3)(i), it shall notify the virtual asset service provider in writing, specifying the following —
- (a) the action that the Authority has taken or intends to take;
 - (b) the reasons for the action, with reference to statutory provisions, and when it is to take effect;
 - (c) whether, in addition to the rights under paragraph (d), the virtual asset service provider may make representations to the Authority within such period as may be specified in the notification; and
 - (d) the licensee's right to appeal under section 30 and the procedure therefor.
- (5) A person appointed under subsection (3)(j) or (3)(k) or whose appointment has been extended under subsection (6)(b) shall, from time to time at the person's discretion and in any case within three months of the date of the appointment or of the extension of the appointment, prepare and furnish to the Authority a report of the affairs of the licensee and of the recommendations thereon.
- (6) On receipt of a report under subsection (5), the Authority may —



- (a) revoke the appointment of the person appointed under subsection (3)(j) or (3)(k);
 - (b) extend the period of the appointment;
 - (c) subject to such conditions as the Authority may impose, allow the licensee or registered person to reorganise its affairs in a manner approved by the Authority; or
 - (d) revoke the licence and apply to the court for an order that the licensee, if the licensee is a company, be wound up by the court in which case the provisions of the *Companies Act (2022 Revision)* relating to the winding up of a company shall apply.
- (7) Notwithstanding any other provision in this Act, the Authority may revoke a virtual asset service licence, a sandbox licence or cancel the registration if the licensee or registered person has ceased, or wishes to cease, carrying on virtual asset service, or has not commenced business within one year of the date of the grant of the licence or the registration.
- (8) Whenever the Authority revokes a licence or cancels a registration under this section, notice of such revocation or cancellation shall be published forthwith in the Gazette.

Direction to cease and desist

- 26.** (1) Where the Authority is of the opinion that a virtual asset service provider is —
- (a) carrying out, or about to carry out, an act that is an unsafe or an unsound practice in conducting the business of the virtual asset service provider; or
 - (b) pursuing, or about to pursue, a course of conduct that is an unsafe or an unsound practice in the conduct of the business of the virtual asset service provider,
- the Authority may direct the virtual asset service provider, in relation to the virtual asset service, to cease or refrain from carrying out the act or pursuing the course of conduct and to carry out such acts as are necessary, in the opinion of the Authority, to remedy or ameliorate its conduct.
- (2) A person who, without reasonable cause, fails to comply with a direction given by the Authority under subsection (1), commits an offence and is liable —
- (a) on summary conviction, to a fine of fifty thousand dollars or to imprisonment for one year, or to both; or
 - (b) on conviction on indictment, to a fine of one hundred thousand dollars or to imprisonment for five years or to both,
- and if the offence continues after conviction, the person shall be liable to a fine of ten thousand dollars for every day on which the offence continues.

- (3) If the Authority knows, or has reasonable grounds to believe, that any of the acts referred to in section 25(2)(b) through (g) have occurred in relation to a virtual asset service provider, the virtual asset service provider commits a breach and may be liable to an administrative fine by virtue of Part VIA of the *Monetary Authority Act (2020 Revision)*.

Revocation of licence

- 27.** (1) The Authority may revoke a virtual asset service licence or a sandbox licence where it is of the opinion that —
- (a) the licensee has failed to comply with an obligation imposed on it by this Act;
 - (b) the licensee is carrying on business in a manner that is not permitted by the licence;
 - (c) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the licensee or a person who is a senior officer or trustee of the licensee;
 - (d) the interests of the clients or potential clients of the licensee are threatened; or
 - (e) the licensee has contravened the *Anti-Money Laundering Regulations (2020 Revision)*.
- (2) Where the Authority revokes a virtual asset service licence under subsection (1), it shall publish a notice to that effect forthwith in the Gazette.

Shares not to be issued or transferred without the prior approval of the Authority

- 28.** (1) No shares totalling ten per cent or more of the total shares in a company which is a virtual asset service provider under this Act shall be issued, and no issued shares or interests shall be voluntarily transferred or disposed of, without the prior approval of the Authority.
- (2) For the avoidance of doubt, where the virtual asset service provider is a partnership, a partnership interest is equivalent to shares in a company.
- (3) For the purposes of subsections (1) and (2), a virtual asset service provider shall provide such information to the Authority, and within the specific time, as the Authority may require for the purpose of assessing whether persons acquiring control or ownership of such shares or partnership interest, as the case may be, referred to in that subsection are fit and proper persons to have such control or ownership.
- (4) For the avoidance of doubt, references to shares representing ten per cent or more of the total voting rights or ownership of a legal person include the cumulative acquisition of shares, voting rights which amount to ten per cent or



more of the total voting rights of the legal person or legal arrangement and a reference to shares being transferred or disposed of includes the transfer or disposal of the legal or the beneficial interest in the shares or interests.

- (5) In the event of shares in a company or the interests in a partnership which is a virtual asset service provider vesting involuntarily or through process of law in a person, the company or partnership, as soon as it becomes aware of such vesting, shall inform the Authority of the number of shares or interests and the identity of the person in whom the shares or interests have vested; and the company or partnership and the person in whom they have vested shall comply with any instructions as to the licence or registration or the business of the company or partnership as may be given by the Authority.
- (6) The Authority shall not grant the approval specified in subsection (1) where the shareholder or partner of a virtual asset service provider is not a fit and proper person.
- (7) The Authority may exempt from the provisions of subsection (1) a virtual asset service provider with ninety-five per cent or more of their shares publicly traded on a stock exchange recognised by the Authority, and any such exemption —
 - (a) shall be subject to the condition that the virtual asset service provider shall, as soon as reasonably practicable, notify the Authority of —
 - (i) any change in control of the virtual asset service provider;
 - (ii) the acquisition by any person or group of persons of shares representing more than ten per cent of the virtual asset service provider's issued share capital or total voting rights; or
 - (iii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the virtual asset service provider's parent company;
 - (b) shall be subject to a condition that the virtual asset service provider shall, as soon as reasonably practicable, provide such information to the Authority, within such period of time as the Authority may require, for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the virtual asset service provider, in the circumstances set out in paragraph (a), are fit and proper persons to have such control or ownership; and
 - (c) shall be subject to such terms and other conditions as the Authority considers necessary.
- (8) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

Guidance

29. (1) The Authority may, after consultation with the Minister and such persons as the Authority considers representative of the virtual asset service sector, issue guidance notes for the purpose of giving practical guidance with respect to this Act.
- (2) The Authority shall publish in the Gazette any guidance notes and such notice shall indicate the date on which the guidance notes come into effect.
- (3) In determining whether a person has complied with any of the requirements under this Act —
- (a) a court shall take into account any relevant guidance notes issued under subsection (1) which apply to that person; and
 - (b) a court may take into account any other relevant guidance issued by a body that regulates, or is representative of, any trade, profession, business or employment carried on by that person.

Appeals

Appeals against decisions made by the Authority

30. (1) An appeal lies to the court from a decision of the Authority —
- (a) for the refusal to grant a licence or registration;
 - (b) revocation of a licence;
 - (c) cancellation of registration;
 - (d) to take enforcement action under section 25;
 - (e) for refusal of an application for virtual asset issuance; and
 - (f) for refusal of an application of an existing licensee to engage in virtual asset service.
- (2) An appeal against the decision of the Authority shall be by way of motion.
- (3) The appellant shall, within twenty-one days after the day on which the Authority has given its decision, serve a notice of motion signed by the appellant or the appellant's attorney-at-law on the Authority of the intention to appeal and of the general ground of the appeal.
- (4) A person who is aggrieved by a decision of the Authority may, upon notice to the Authority, apply to the court for leave to extend the time within which the notice of appeal prescribed by this section may be served and the court, upon the hearing of such application, may extend the time prescribed by this section as it considers fit.
- (5) The Authority shall, upon receiving the notice of appeal, transmit to the Clerk of the court without delay a copy of the decision and all papers relating to the



appeal, but the Authority is not compelled to disclose any information if it is considered that the public interest would suffer by such disclosure.

- (6) At the hearing of the appeal the appellant shall, before going into the case, state all the grounds of appeal on which the appellant intends to rely and shall not, unless by leave of the court go into any matters not raised by such statements.
- (7) The court may adjourn the hearing of an appeal and may, upon the hearing thereof confirm, reverse, vary or modify the decision of the Authority or remit the matter with the opinion of the court thereon to the Authority.
- (8) An appeal against a decision of the Authority under this section shall not have the effect of suspending the execution of the decision.

Audit of accounts

- 31.** (1) A virtual asset service licensee shall have its accounts audited annually or at such times as the Authority may require by an auditor approved by the Authority who shall be a member of —
- (a) the Institute of Chartered Accountants in England and Wales;
 - (b) the Canadian Institute of Chartered Accountants;
 - (c) the Chartered Association of Certified Accountants;
 - (d) the American Institute of Certified Public Accountants; or
 - (e) such other accounting professional body or institute approved by the Authority.
- (2) Within six months of the end of a licensee’s financial year, the licensee shall forward to the Authority the audited accounts for the financial year just ended.
 - (3) Any licensee who fails to comply with subsection (2) within the stated period or any extension to the period granted by the Authority for good cause shown, is liable to a late filing fee of fifty dollars for each day or part thereof that the licensee fails to comply.
 - (4) The Authority may exempt a virtual asset service licensee from the audit requirement under subsection (1) if the Authority determines the requirement to be unnecessary or prohibitive given —
 - (a) the size, scope and complexity of the economic activity; and
 - (b) the availability of auditing services for the virtual asset service.
 - (5) When a licensee who is required to provide audited accounts to the Authority changes its auditor, the Authority may require the former auditor to explain in writing the circumstances giving rise to the change.
 - (6) If it appears to the Authority that an auditor has failed to comply with the requirements in section 32(1), the Authority may disqualify the auditor from being an auditor of a licensee but the Authority may remove any disqualification

imposed under this subsection if it is satisfied that the person in question will in future comply with the requirements.

- (7) A licensee shall not appoint as an auditor a person disqualified under subsection (6).

Duty of auditor

32. (1) If an auditor, in the course of carrying out an audit or producing a report under section 9 becomes aware of or has reasonable grounds to believe that the licensee or registered person —

- (a) is or is likely to become unable to meet its obligations as they fall due;
- (b) carrying on or attempting to carry on business otherwise than in compliance with —
 - (i) this Act or any regulations made hereunder;
 - (ii) Part XVIIIA of the *Companies Act (2022 Revision)*, Part 12 of the *Limited Liability Companies Act (2021 Revision)* and Part 8 of the *Limited Liability Partnership Act (2021 Revision)*, if the licensee is a “corporate services provider” as defined in that Part;
 - (iii) the *Anti-Money Laundering Regulations (2020 Revision)*; or
 - (iv) a condition of the licence or registration;
- (c) is carrying on or attempting to carry on business in a manner that is prejudicial to its clients or is winding up its business voluntarily in a manner that is prejudicial to its clients or creditors; or
- (d) is carrying on or attempting to carry on business without maintaining any or sufficient accounting records or record keeping systems to enable the auditor to carry out an audit or produce a report,

the auditor shall immediately give the Authority and the licensee written notice of the knowledge or belief and giving reasons therefor.

- (2) An auditor who contravenes subsection (1) is liable to removal by the Authority from its list of approved auditors.
- (3) A reference in this section to an auditor carrying out an audit or preparing a report on a licensee or registered person includes an auditor who was engaged to carry out such an audit or prepare such a report or who was in the course of so doing but resigned before completion or whose contract to carry out same was otherwise terminated.
- (4) No duty to which an auditor of a licensee or registered person may be subject shall be regarded as being contravened by reason of the auditor communicating in good faith to the Authority any information or opinion on a matter specified in subsection (1) or providing any information or opinion in response to a request made by the Authority pursuant to a power conferred by this Act.



- (5) An auditor shall not be liable in damages for anything done or omitted to be done in the discharge or proposed discharge of the auditor's functions under this Act in relation to the preparation of a report or in relation to any notice given under subsection (1) unless it is shown that the act or omission was in bad faith.

Entry and search of premises

- 33.** (1) If the court, on sworn information on oath, is satisfied that the conditions in subsection (2) are fulfilled and either —
- (a) that admission to the premises has been refused, or that a refusal is expected, and that reasonable notice of the intention to apply for the warrant has been given to the occupier;
 - (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry; or
 - (c) that the case is one of urgency, or that the premises are unoccupied or that the occupier is temporarily absent,
- the court may, by warrant signed by a judge, authorise a constable of the rank of inspector or above to enter the premises, if need be, by reasonable force.
- (2) The conditions referred to in subsection (1) are that there are reasonable grounds for suspecting that —
- (a) there is or has been, on the premises to which entry is sought, any contravention of this Act or the *Proceeds of Crime Act (2020 Revision)*; or
 - (b) there is on those premises evidence of any contravention of this Act or —
 - (i) the *Proceeds of Crime Act (2020 Revision)*;
 - (ii) Part XVIIIA of the *Companies Act (2022 Revision)*;
 - (iii) Part 12 of the *Limited Liability Companies Act (2021 Revision)*; or
 - (iv) Part 8 of the *Limited Liability Partnership Act (2021 Revision)*.
- (3) Every warrant granted under this section shall continue in force for a period of one month.
- (4) A constable entering any premises by virtue of this section may be accompanied by such employees of, or advisers to, the Authority as may be necessary to ensure the successful execution of the warrant.
- (5) The constable authorised by any such warrant to search any premises may, if so authorised by the warrant, search every person who is found in those premises and may seize any documents, computer hardware or mobile devices found in the possession of any such person or in such premises which the constable has reasonable ground for believing ought to have been produced pursuant to a lawful request from the Authority.
- (6) A person who wilfully obstructs a constable in the exercise of any powers conferred on the constable by this section commits an offence and is liable on

summary conviction to a fine of one hundred thousand dollars and to imprisonment for five years.

- (7) The Rules Committee of the Grand Court may make rules for the purposes of this section.

Winding up

- 34.** (1) The Authority may apply to the court for a licensee or a registered person, or a former licensee or registered person, that is or has been in contravention of section 4(1) to be wound up by the court, notwithstanding any winding up of the company voluntarily.
- (2) On an application under subsection (1), the court may make an order for the licensee or registered person to be wound up by the court if the court is of the opinion that the winding up would be in the public interest in all the circumstances of the case.

Part 6 – General

Offence to carry on business without licence, registration or waiver

- 35.** (1) A person who carries on, or purports to carry on, virtual asset service in or from within the Islands for which registration is required who is not a registered person or the holder of a waiver under this Act, commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for one year.
- (2) Where the offence under subsection (1) continues after conviction, the person shall be liable to a fine of ten thousand dollars for each day during which the offence continues.
- (3) A person who carries on, or purports to carry on —
- (a) virtual asset custody services; or
 - (b) operate a virtual asset trading platform,
- in or from within the Islands who is not a licensee or is not a person who is in receipt of a waiver under this Act, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for one year and in the case of a continuing offence, to a fine of ten thousand dollars for each day during which the offence continues.



Offences by corporations

- 36.** (1) Where an offence is committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any senior officer of the body corporate, or any person who was purporting to act in any such capacity, that person as well as the body corporate commits that offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a senior officer of the body corporate.

Offences for which there is no penalty

- 37.** A person who contravenes any provision of this Act for which no penalty is specifically provided commits an offence and is liable on summary conviction to a fine of four thousand dollars.

Fitness and propriety

- 38.** In determining whether a person is a fit and proper person, regard shall be had to all circumstances including that person's —
- (a) honesty, integrity and reputation;
 - (b) competence and capability; and
 - (c) financial soundness.

Regulations

- 39.** (1) The Cabinet may, after consultation with the Authority, make regulations —
- (a) prescribing anything which is to be prescribed under this Act; and
 - (b) generally for carrying the purposes and provisions of this Act into effect.
- (2) Without prejudice to the generality of the foregoing, such regulations may in respect of registered persons, virtual asset service licensees or sandbox licensees —
- (a) specify standards for the form and content of any advertising or promotion of virtual asset service;
 - (b) require a registered person, a virtual asset service licensee or a sandbox licensee to make full and proper disclosure to clients of the capacity in which the registered person or licensee is acting in relation to a particular virtual asset services transaction and whether the transaction is being effected for the registered person's or the licensee's own account or that of any person other than the client;

- (c) specify standards for dealings with clients and clients' assets, including the holding upon trust of clients' assets by the registered person, virtual asset service licensee or sandbox licensee;
 - (d) establish financial requirements and specify standards for financial conduct and record keeping and reporting;
 - (e) specify disclosure requirements in respect of the amount, value or arrangements for the payment or provision, of commissions or other inducements;
 - (f) specify arrangements for the settlement of disputes; and
 - (g) specify the nature and extent of any insurance arrangements required of the registered person, virtual asset service licensee or sandbox licensee.
- (3) Regulations made under this Act may provide that the contravention of a provision constitutes an offence and may prescribe penalties for any such offence not exceeding the maximum fine and term of imprisonment for any offence under this Act.
- (4) Regulations made under this Act may provide for such savings, transitional and consequential provisions to have effect in connection with the coming into operation of any provision of this Act as are necessary or expedient.
- (5) Regulations made under subsection (4) may be given retrospective operation to a date that is not earlier than 31st October, 2020.
- (6) Regulations which are given retrospective operation shall not —
- (a) affect in a prejudicial manner, rights existing before the date on which those regulations come into force; or
 - (b) impose liabilities in respect of anything done or omitted to be done before the date on which those regulations come into force

Indemnity

- 40.** Neither the Cabinet, nor a director or officer of the Authority nor any person authorised in writing by the Authority to assist it in undertaking any of its functions under this Act or appointed pursuant to section 25 shall be liable in damages for anything done or omitted to be done in the discharge or purported discharge of their functions under this Act, unless it is shown that the act or omission was in bad faith.

Regulatory law

- 41.** This Act is a regulatory law for the purposes of the *Monetary Authority Act (2020 Revision)*.



Publication in consolidated and revised form authorised by the Cabinet this 11th day of January, 2022.

Kim Bullings
Clerk of the Cabinet



ENDNOTES

Table of Legislation history:

SL #	Law/Act #	Legislation	Commencement	Gazette
1/2021		Virtual Asset (Service Providers) (Amendment) Act, 2020 (Commencement) Order, 2021	11-Jan-2021	LG1/2021/s3
	59/2020	Virtual Asset (Service Providers) (Amendment) Act, 2020	15-Jan-2021	LG1/2021/s3
	56/2020	Citation of Acts of Parliament Act, 2020	3-Dec-2020	LG89/2020/s1
	35/2020	Civil Partnership Law, 2020	4-Sep-2020	LG64/2020/s1
137/2020		Virtual Asset (Service Providers) Act, 2020 (Commencement) Order, 2020	28-Oct-2020	LG80/2020/s5
	14/2020	Virtual Asset (Service Providers) Act, 2020	31-Jan-2021	LG40/2020/s1

Table of endnote references:

¹ S.2	<i>amended by s.2 of Act 59 of 2020.</i>
² S.7(1)	<i>amended by s.3 of Act 59 of 2020.</i>
³ S.7(1A)	<i>inserted by s.3 of Act 59 of 2020.</i>
⁴ S.7(3)	<i>amended by s.3 of Act 59 of 2020.</i>
⁵ S.9(6)	<i>amended by s.4 of Act 59 of 2020.</i>
⁶ S.15(5A)	<i>inserted by s.5 of Act 59 of 2020.</i>

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