

## Legal Briefings

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# Key factors for launching a virtual assets business in the BVI

The British Virgin Islands (“**BVI**”) continues to attract virtual assets businesses seeking to capitalize on its status as a leading offshore financial centre. Unlike many other jurisdictions that have either prohibited certain types of virtual assets or imposed material restrictions on them, the BVI has become renowned as a friendly jurisdiction for facilitating the development of virtual asset ecosystems, platforms, projects, exchanges and marketplaces for clients.

The Virtual Assets Service Providers Act, 2022 (the “**VASP Act**”) in the BVI creates the legal framework for the registration and supervision of Virtual Assets Service Providers (“**VASPs**”) such as virtual asset exchanges, virtual asset marketplaces, virtual asset brokerages, virtual asset custody, perpetual futures exchanges operating in and from within the BVI. The VASP Act describes the activities that require registration through the definitions of key terms such as virtual assets, virtual assets service and VASPs. For clarity, activities that do not qualify as virtual assets services have also been outlined in the VASP Act.

### 1. Undertake a legal analysis of whether your project falls within the remit of the VASP Act

It is important appreciate that not all activities of a BVI entity which involve virtual assets will necessarily fall within the VASP Act. For example, dealing, arranging deals in, or managing investments, providing investment advice, custodian and/or administration services with respect to investments, and operating an investment exchange may regulated under the BVI Securities and Investment Business Act (“**SIBA**”) if the virtual asset constitutes an “investment” under SIBA.

### 2. Understanding the key features of the VASP Act

The key features of the VASP Act include:

- i. details of the application and approval requirements for registration as a VASP, including additional specific requirements for VASPs seeking to provide virtual assets custody services or operate a virtual assets exchange;
- ii. the requirement for VASPs to appoint authorised representatives;
- iii. particulars of the functions of an authorised representative and the requirement for authorised representatives to be approved by the Financial Services Commission (the “**Commission**”) to act in relation to VASPs;
- iv. the requirement for VASPs to appoint an auditor approved by the Commission and the obligations of the auditor to the Commission;
- v. details of the information that a registered VASP must report to the Commission on an ongoing basis;

- vi. the process to be adopted for disposing or acquiring a significant or controlling interest in a VASP;
- vii. the establishment of measures to protect clients' assets;
- viii. prohibitions on making or issuing misleading advertisements;
- ix. AML/CFT and other regulatory compliance matters; and
- x. the legal mechanism for a VASP to participate in the Regulatory Sandbox.

### 3. Advantages that the BVI offers

The benefits and advantages of establishing virtual assets businesses in the BVI include:

- (1) **Stability and reliability.** As an autonomous British Overseas Territory that applies English common law rules and principles, it has a well-tested and efficient judicial system, with a final right of appeal to the Privy Council.
- (2) **Incorporation and maintenance costs.** BVI companies are cheap to incorporate and maintain in good standing.
- (3) **Tax neutrality.** No income, corporate, capital gains or wealth taxes, withholdings or other similar taxes are imposed on BVI companies as a matter of BVI law.
- (4) **Exchange controls.** There are no exchange controls and restrictions as a matter of BVI law.
- (5) **Confidentiality.** Shareholders and directors of a BVI business company are generally a matter of private record.
- (6) **Corporate flexibility.** The objects, capacity and powers of a BVI company are generally unrestricted. Most decisions can be taken by the board of directors of the relevant company, with only certain matters requiring shareholder approval. There is considerable flexibility to tailor the memorandum of association and articles of association to meet a client's requirements.

### 4. What are Virtual Assets and VASP Activities?

Subject to certain limitations, a '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***". This is a broad definition and will cover all types of virtual assets, including non-fungible tokens.

The VASP Act provides that a company may apply to the Commission to be regulated as a VASP in one or more of the following categories:

- (i) carrying on the business of providing a virtual asset service;
- (ii) engaging in the business of providing a virtual assets custody service; and
- (iii) operating a virtual assets exchange.

### 5. What is a Virtual Assets Service?

The term "virtual assets service" is defined in the VASP Act as the business of engaging, on behalf of another person, in the following activities:

- (i) exchange between virtual assets and fiat currencies;

- (ii) exchange between one or more forms of virtual assets;
- (iii) transfer of virtual assets, where the transfer relates to conducting a transaction on behalf of another person that moves a virtual asset from one virtual asset address or account to another;
- (iv) safekeeping or administration of virtual assets or instruments enabling control over virtual assets; and
- (v) participation in, and provision of, financial services related to an issuer's offer or sale of a virtual asset.

The VASP Act also states that the following activities would also be considered to be the provision of a virtual assets service:

- (i) hosting wallets or maintaining custody or control over another person's virtual asset, wallet or private key;
- (ii) providing financial services relating to the issuance, offer or sale of a virtual asset; and
- (iii) providing kiosks (such as automatic teller machines, bitcoin teller machines or vending machines) for the purpose of facilitating virtual assets activities through electronic terminals to enable the owner or operator of the kiosk to actively facilitate the exchange of virtual assets for fiat currency or other virtual assets.

The above lists may be expanded by subsequent guidelines or regulations.

## 6. Services specifically excluded from the application of the BVI VASP Act

Rather helpfully, the BVI VASP Act sets out a non-comprehensive list of some of the services which are specifically excluded from its remit and these are as follows:

- (a) providing ancillary infrastructure to allow another person to offer a service, such as cloud data storage provider or integrity service provider responsible for verifying the accuracy of signatures;
- (b) providing service as a software developer or provider of unhosted wallets whose function is only to develop or sell software or hardware;
- (c) solely creating or selling a software application or virtual asset platform;
- (d) providing ancillary services or products to a virtual asset network, including the provision of services like hardware wallet manufacturer or provider of unhosted wallets, to the extent that such services do not extend to engaging in or actively facilitating as a business any of those services for or on behalf of another person;
- (e) solely engaging in the operation of a virtual asset network without engaging or facilitating any of the activities or operations of a VASP on behalf of customers;
- (f) providing closed-loop items that are non-transferable, non-exchangeable and which cannot be used for payment or investment purposes; and
- (g) accepting virtual assets as payment for good or services (such as the acceptance of virtual assets by a merchant when effecting the purchase of goods).

## 7. Are issuances of virtual assets regulated under the VASP Act?

The issuance by a BVI company of virtual assets is not included in the definition of virtual assets service. This is the opposite of the position in the Cayman Islands. Accordingly, to the extent that a BVI company is involved in a crypto project solely as the issuer of tokens, the VASP Act would not require the entity to be regulated in respect of that activity.

## 8. Requirements for Service Providers or Functionaries

A VASP must at all times have the following functionaries:

- (a) an authorised representative;
- (b) an auditor; and
- (c) an individual approved by the Commission who acts as compliance officer, to ensure compliance by the VASP with the provisions of the VASP Act and other applicable legislation.

## Further Assistance

This publication is not intended to be a substitute for specific legal advice or a legal opinion. If you require further advice relating to the matters discussed in this Briefing, please contact us. We would be delighted to assist.

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## About Loeb Smith Attorneys

Loeb Smith is an offshore corporate law firm, with offices in the British Virgin Islands, the Cayman Islands, and Hong Kong, whose Attorneys have an outstanding record of advising on the Cayman Islands' law aspects and BVI law aspects of international corporate, investment, and finance transactions. Our team delivers high quality Partner-led professional legal services at competitive rates and has an excellent track record of advising investment fund managers, in-house counsels, financial institutions, onshore counsels, banks, companies, and private clients to find successful outcomes and solutions to their day-to-day issues and complex, strategic matters.

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