



Legal Insights

BVI expands scope of its Anti-Money Laundering Regime to Virtual Asset Service Providers.

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The British Virgin Islands (“**BVI**”) has expanded the scope of its Anti-Money Laundering (“**AML**”), Counter Terrorist Financing (“**CFT**”) and Counter Proliferation Financing (“**CPF**”) laws to cover, among other things, virtual asset businesses. Under the BVI’s Anti-Money Laundering Regulations, in undertaking “relevant business”, a “relevant person” is not permitted to (i) form a business relationship or (ii) carry out a one-off transaction with or for another person unless the “relevant person” carries out certain AML/CFT/CPF obligations.

What is the change?

Under the Anti-Money Laundering (Amendment) Regulations, 2022 (“**Amendment Regulations**”) and the Anti-Money Laundering and Terrorist Financing (Amendment) Code of Practice, 2022 (the “**Amendment Code**”) the BVI has expanded the definition of “relevant person” to include virtual asset service providers (“**VASPs**”) and has expanded the definition of “relevant business” to include the business of carrying on or providing virtual asset services when a transaction involves virtual assets valued at US\$1,000 or more. The Amendment Regulations and the Amendment Code are now in force and effective (from 19th August 2022 and 29th August 2022 respectively), but the specific sections of the Amendment Regulations that relate to VASPs will not come into force until 1 December 2022. Our subsequent briefings on the Amendment Regulations and the Amendment Code will cover other changes introduced.

The BVI’s Virtual Assets Service Providers Act (“**VASP Act**”) is not yet in force and has not yet been published. The requirement for VASPs to comply with the updated BVI AML/CFT/CPF regime from 1 December 2022 is a distinct requirement that may also be covered in the Virtual Assets Service Providers Act when it is eventually published.

What are virtual assets and who is a VASP?

Even though the BVI's VASP Act has not yet been published, it is likely that the definition of "*virtual asset*", and "*virtual asset services provider*" will be very similar to the definitions within the [FATF Glossary](#) as follows:

"**Virtual asset**" as a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities, and other financial assets that are already covered elsewhere in the FATF Recommendations;

"**Virtual asset service provider**" as any natural or legal person who is not covered elsewhere under the Recommendations and as a business that conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

- i. Exchange between virtual assets and fiat currencies;
- ii. Exchange between one or more forms of virtual assets;
- iii. Transfer of virtual assets; and
- iv. Safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets;
- v. Participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

Why are the changes being made?

These changes are being made as part of the BVI's effort in implementing the amended Financial Action Task Force ("**FATF**") Recommendation 15 (New Technologies) of the [FATF's International Standards for Combating Money Laundering and the Financing of Terrorism & Proliferation](#) and the [FATF's Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers](#). The FATF Recommendation 15 requires that VASPs be regulated for anti-money laundering and countering the financing of terrorism (AML/CFT) purposes, that they be licensed or registered, and subject to effective systems for monitoring or supervision.

What does this mean for you?

With effect from 1 December 2022, VASPs providing a virtual asset service need to comply with the updated BVI AML/CFT/CPF regime. Accordingly, by way of summary, VASPs will be required to, among other things:

- i. appoint a money laundering reporting officer (“**MLRO**”) who (1) is required to be of sufficient seniority to perform the functions reposed on an MLRO under the Amendment Code and the Amendment Regulations, (2) must be a natural person, and (3) have access to all relevant information and material of the VASP to enable him/her to perform the functions reposed in him/her under the Amendment Code and the Amendment Regulations. *See required qualifications and obligations of MLRO below.*
- ii. establish and maintain written internal reporting policies and procedures and internal controls for, among other things, (A) customer identification (including requesting, collection and verification of client/customer due diligence and conducting fraud, adverse media, politically exposed persons, and sanctions screening), (B) record keeping and internal reporting to (i) enable its directors, or as the case may be, partners, all other persons involved in its management, and all key staff, to know to whom they should report knowledge or suspicion of money laundering; (ii) ensure that there is a clear reporting chain under which suspicions of money laundering will be passed to the MLRO; (iii) ensure that the MLRO has reasonable access to all relevant information which may be of assistance to him/her and which is available to the VASP; and (iv) ensure full compliance with the requirements of the Amendment Code.
- iii. comply with the new “travel rule” in relation to transfers of virtual assets. **FATF** Recommendation 16 (Wire transfers) requires that countries collect identifying information from the originators and beneficiaries of domestic and cross-border wire transfers in order to create a suitable AML/CFT audit trail. This includes the obligation to obtain, hold, and submit required originator and beneficiary information associated with virtual asset transfers in order to identify and report suspicious transactions, take freezing actions, and prohibit transactions with designated persons and entities. The [requirements](#) apply to both VASPs and other obliged entities such as financial institutions when they send or receive virtual asset transfers on behalf of a customer.

The updated BVI AML/CFT/CPF regime sets a de minimis level for one-off transactions of US\$1,000, above which the VASP is required to collect customer due diligence.

What are the qualifications and responsibilities for an MLRO?

In order to be appointed as an MLRO, a person is required to possess the following qualifications:

- i. he or she must at the minimum hold a diploma with a post qualification experience of not less than 3 years;
- ii. he or she must be fit and proper;
- iii. he or she must have a broad knowledge of anti-money laundering and terrorist financing matters, including the relevant regional and international treaties (including United Nations Resolutions) relating to the combating of money laundering and terrorist financing;
- iv. he or she must have a good appreciation and understanding of BVI laws relating to money laundering and terrorist financing; and
- v. he or she must possess the ability to make independent and analytical decisions and not be easily susceptible to undue influence.

The MLRO's responsibility includes ensuring compliance by staff of the VASP with:

- i. the provisions of the BVI's AML/CFT/CPF regime, the Proceeds of Criminal Conduct Act, the Anti-money Laundering and Terrorist Financing (Amendment) Code of Practice, and other enactments relating to AML/CFT/CPF;
- ii. internal reporting and policies and procedures relating to AML/CFT/CPF compliance.

The MLRO will be the main point of contact with the BVI regulatory authorities (e.g. the BVI FSC and FIA).

This publication is not intended to be a substitute for specific legal advice or a legal opinion. For specific advice on the application of BVI's Anti-Money Laundering Regime to Virtual Asset Service Providers, please contact your usual Loeb Smith attorney or :

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