

# Legal Briefings

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## The British Virgin Islands: Navigating the Future of Offshore Financial Services in the Age of Digital Assets and AI

### Introduction

The Financial Services Commission (**FSC**) of the British Virgin Islands (**BVI**) has published guidance on what is required of persons registered under the Virtual Assets Service Providers Act 2022 (**VASP Act**) to comply with the "Travel Rule" (**Guidance**).

The "Travel Rule", introduced by the Financial Action Task Force (**FATF**) in 2019 was a major step in addressing anti-money laundering (**AML**), counter-terrorism financing (**CFT**) and counter proliferation financing within virtual assets ecosystems. Initially impacting traditional financial institutions only, the Travel Rule has since been extended to Virtual Asset Service Providers (**VASPs**), obligating them to comply with similar regulations to mitigate risks associated with money laundering, terrorist financing, and proliferation financing.

The Guidance outlines the key obligations and considerations for VASPs and also their directors and officers.

### What is the Travel Rule and what are its implications?

The "Travel Rule" refers to a global regulatory requirement for financial institutions, including VASPs, to share information about the originator and beneficiary of cryptocurrency transactions above a certain threshold. This rule, initially developed by the FATF as Recommendation 16 for combating money laundering and terrorism financing, is applied to virtual asset transactions to promote transparency and improve security within the digital asset ecosystem.

The rule mandates that VASPs collect and transmit identifiable information about the parties involved in a transaction (e.g., name, account number, and address) to the next financial institution in the transaction chain when transferring amounts above the designated limit, often set around US\$1,000. This requirement helps law enforcement track potentially illicit transactions, aiming to reduce criminal activity and enhance trust within web3.0 ecosystems.

However, implementing the Travel Rule can be challenging, as blockchain transactions are pseudonymous by nature. VASPs must develop technological solutions to enable information sharing while balancing privacy concerns. Some crypto exchanges and wallet providers are working to establish compliance protocols and technical standards to address these regulatory requirements and support international efforts against financial crime.

In the BVI, the Travel Rule has been incorporated into direct legislation through amendments to the Anti-Money Laundering Code of Practice and the Anti-Money Laundering Regulations (together the **AML Regime**). VASPs registered under the VASP Act are required to comply with the Regime and will be required to demonstrate how the VASP will comply with them as part of the application process under the

VASP Act. These regulations effectively place VASPs under the scope of the FATF's global AML/CFT framework.

## The Guidance

The Guidance offers useful additional information to registered and prospective VASPs on a number of points.

- It is recognised that the Directors and Senior Officers of a VASP are ultimately responsible for ensuring that the VASP adheres to the AML Regime and other applicable laws. The Guidance specifically references section 25 of the VASP Act, which requires VASPs to “*take appropriate steps to comply with the requirements of [the VASP Act] and other enactments relating to money laundering, terrorist financing and proliferation financing and shall...put in place appropriate systems and procedures to ensure such compliance*”.
- Whilst the Guidance recognises that a VASP may engage a third-party contractor to assist in compliance with the Travel Rule, this does not obviate the VASP of all responsibility. In particular, the Guidance requires that the VASP should risk assess the third-party contractor both prior to engagement and during the continuance of the relationship.
- In addition to compliance with the Travel Rule under BVI laws, VASPs must monitor, on an ongoing basis, the implementation of the Travel Rule in other jurisdictions as part of its continued assessment of counterparty risk.
- VASPs are required to take reasonable steps to ensure that their counterparties in jurisdictions that have not yet fully implemented the Travel Rule can properly receive and handle the necessary information during virtual asset transfers. If a jurisdiction has not fully implemented the Travel Rule, BVI VASPs must retain all relevant transaction data, which can be shared with the FSC and law enforcement agencies.
- Conversely, when receiving funds from a foreign VASP whose jurisdiction has not yet fully implemented the Travel Rule, the BVI VASP should consider all relevant risks (e.g. country risk, missing information etc.) prior to making the virtual assets available to the beneficiary. In such a situation, the BVI VASP could use blockchain analytics to assist with its risk assessment of the foreign VASP.
- Transfers of virtual assets with a value not exceeding US\$1,000 are out-of-scope of the Travel Rule, unless there are reasonable grounds for suspecting the funds/assets being transferred are connected with money laundering, terrorist financing or proliferation financing. Linked transactions, where multiple transfers from the same originator to the same beneficiary occur over a short period, must be treated as linked transactions for regulatory purposes. For example, a number of successive transactions of US\$999 between the same originator and beneficiary will be suspect, and VASPs are required to have systems in place which track such attempts.
- Other virtual assets which are out-of-scope of the Travel Rule include transfers where both the originator and the beneficiary hold accounts with the same VASP and transfers between two VASPs who are acting on their own account.
- Transfers where the same individual or entity are both originator and beneficiary (e.g. where the individual or entity has an account with two different VASPs) are within scope of the Travel Rule, as are transfers between entities in the same group of companies.

- The regulations emphasise that VASPs must maintain strong controls to detect missing or incomplete information and ensure appropriate responses. For example, a VASP would be expected to delay or refuse a transfer until the required data is obtained.
- The responsibility for compliance with the Travel Rule extends also to 'intermediary VASPs', who participate in transactions without being the originating or beneficiary VASP. These intermediaries must verify that all necessary information is received and fully document any decision to delay or continue affected transactions.
- One of the more challenging areas for VASPs is managing transfers to and from unhosted wallets. Unhosted wallets are not directly linked to a VASP, which complicates the verification of beneficial ownership and control. BVI VASPs are expected to adopt a risk-based approach to assess the risks associated with these transfers. In higher-risk cases, additional verification methods, such as the "Satoshi Test" or "Address Ownership Proof Protocol," can be employed to verify ownership of the unhosted wallet.
- If sufficient information about the ownership and control of an unhosted wallet cannot be obtained, BVI VASPs must block the transfer and report the suspicious activity to the relevant authorities. The importance of robust verification measures cannot be overstated, as they play a critical role in mitigating risks associated with unhosted wallets, which are often used in illicit activities due to their anonymity.

## Conclusion

The extension of the FATF Travel Rule to VASPs represented a significant shift in the regulatory landscape for virtual asset businesses. This Guidance, whilst perhaps overdue, is nonetheless welcome. Compliance with the Travel Rule is not only a legal obligation but also a key aspect of maintaining trust in the virtual asset ecosystem and in the BVI as a respected offshore jurisdiction. The BVI's approach to implementing the Travel Rule reflects a broader trend toward regulatory harmonization, ensuring that VASPs adhere to global standards.

For virtual asset businesses, the implications are clear: robust AML/CFT frameworks must be in place which are sufficiently sophisticated and nuanced to identify and stop attempts to circumvent scrutiny. Such policies also need to include detailed policies on how to handle transfers involving jurisdictions with incomplete Travel Rule implementation or those involving unhosted wallets. These businesses must also stay informed about the evolving regulatory environment, as non-compliance can result in significant penalties and reputational damage, both for the VASP and for the BVI more generally.

The Travel Rule is a crucial tool in the global fight against financial crime. Virtual asset businesses must play their part and take proactive steps to comply with international standards. Given the rapidly evolving nature of virtual assets, staying ahead of regulatory developments will be essential for maintaining compliance and ensuring sustainable growth in the sector.

## 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 application of the Travel Rule for BVI VASPs, please contact us. We would be delighted to assist.

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