

Legal Briefings

CIMA's STATEMENT OF PRINCIPLES ON CONDUCT OF VIRTUAL ASSET SERVICES

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The Cayman Islands Monetary Authority ("CIMA") published the Statement of Principles for the Conduct of Virtual Asset Services earlier this year and this article aims to set out the Principles set out therein and their importance. The Statement of Principles has to be considered together with the Virtual Assets (Service Provider) Act 2020 ("VASP Act"), the Anti-Money Laundering Regulations (As Revised) and any other regulatory measures issued by CIMA from time to time.

The Statement of Principles sets out the general standards by which all entities in the Cayman Islands should conduct virtual asset services, including connected and incidental business.

The Statement of Principles will be used as a measure against which CIMA will assess compliance and it should be carefully considered in the Anti-Money Laundering Policy and Procedure Manual of any Cayman Islands virtual assets service provider.

There are twelve (12) Principles which apply to all virtual asset service providers, their directors and officers, and/or other persons engaged in virtual assets services.

What is a virtual asset service?

As defined in the VASP Act, "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;

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- (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.

A “virtual asset” is 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.

Who is a virtual asset service provider?

A virtual asset service provider includes a (i) Cayman exempted company, (ii) exempted limited partnership, (iii) limited liability company, and (iv) a foreign company registered in the Cayman Islands, and provides virtual asset service as a business or in the course of business in or from within the Cayman Islands and is registered or licensed in accordance with the VASP Act or is an existing licensee that is granted a waiver by CIMA under section 16 of the VASP Act.

Compliance with the Statement of Principles will be closely monitored by CIMA which has broad supervisory powers to impose a full range of sanctions and penalties whenever there has been a contravention of the Statement of Principles. CIMA’s policies and procedures, as contained in its Enforcement Manual will apply. It could range from the suspension or revocation of the registration or license of the virtual asset service provider, to CIMA applying to the Grand Court of the Cayman Islands for an order directing that the virtual asset service provider is wound up.

In addition to the Enforcement Manual, CIMA has any other powers conferred by the Monetary Authority Act, VASP Act and any other applicable statutes or regulations.

The Statement of Principles

The twelve (12) Principles of Conduct of Virtual Asset Services as set out in the Statement of Principles are:

Principle 1: Honesty and Integrity

Persons providing virtual asset services should conduct their operations and communications in an honest and ethical manner and never pose a risk to the public or to the reputation of the Cayman Islands.

Principle 2: Fair treatment of customers

Persons providing virtual asset services must pay due regard to the interests of their customers and treat them fairly. All communications to customers should be accurate and in a form that the customers can understand; and all customer complaints or issues dealt with in a timely and consistent manner.

Principle 3: Protection of Customer Data

Persons providing virtual asset services must protect the personal data of customers by way of adequate storage, data protection, maintenance, proper record keeping and other appropriate measures.

Principle 4: Protection and Segregation of Customer Assets

Persons providing virtual asset services should take all steps to protect assets of customers and ensure that customer assets are clearly identified and segregated from proprietary assets.

Principle 5: Maintenance of Security Systems

Persons providing virtual asset services should ensure that appropriate systems and security access protocols are maintained to effectively guard against cyber threats; and all employees, including senior officers and board of directors, must be fully aware of relevant cyber security threats.

Principle 6: Due Skill, Care and Diligence

Persons engaged in virtual asset services must conduct their business with due skill, care and diligence, employ forward-looking risk management practices and always consider risks to its customers and the reputation of the Cayman Islands in addition to risks to its own business.

Principle 7: Prevention, Detection and Disclosure of Financial Crimes

Persons engaged in virtual asset services should have appropriate systems, policies, processes and procedures to ensure compliance with the Anti-Money Laundering Regulations (As Revised) and other Cayman Islands laws relating to the combating of money laundering, terrorist financing and proliferation financing.

Principle 8: Conflict of Interest and Unfair Dealings

Persons engaged in virtual asset services should identify and effectively manage conflicts of interest and, where applicable, put in place price discovery mechanisms to prevent price manipulation and other unfair trading practices including collusion and front-running.

Principle 9: Adequate Resources

Persons engaged in virtual asset services should ensure that, having regard to size, scope and complexity of their business, adequate financial and nonfinancial resources are available including adequate capital and insurance (including against theft or loss).

Principle 10: Full Disclosure

Persons engaged in virtual asset services must provide full and proper disclosure of their operations including disclosure of (a) the capacity they are acting in (in relation to a relevant transaction), (b) risks associated with the virtual asset service or transaction, (c) the quantity, value, or arrangements

for the payment or provision of commissions or other inducements and, (d) where applicable, provisions for custodial or other third-party arrangements.

Principle 11: Corporate Governance and Resilience

Persons engaged in virtual asset services must have effective corporate governance arrangements and must take careful consideration regarding structure, strategy, procedures and corporate culture. They must also be fully prepared for all possible contingencies to ensure minimal loss and disruption to customers, even in the event of the company winding down.

Principle 12: Compliance with Regulatory Acts

Persons engaged in virtual asset services should have appropriate systems, policies, processes and procedures to ensure compliance with regulatory laws.

For specific advice on an application to CIMA for the registration and/or licensing of a Virtual Asset Service Provider, please contact your usual Loeb Smith attorney or any of:

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