



Vanuatu Financial Services Commission
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Republic of Vanuatu

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Dear Industry members,

RE: Drafting of the Digital Asset Legislation

The Vanuatu Financial Services Commission (VFSC) wishes to inform the industry and other stakeholders that the drafting of a new legislation on Digital Assets/ Virtual Assets and Virtual Asset Service Providers (VASP) will commence soon. This is necessary not only to address the FATF Recommendations 15 – 21 but also to strengthen the regulatory requirements surrounding the supervision of Digital Assets/ Virtual Assets and licencing of Virtual Assets Service Providers (VASP).

The International organizations such as the Financial Action Task Force (FATF), the International Organisation of Securities Commissions (IOSCO), and others who are mandated to set global standards in the field of financial services, money laundering and law enforcement, have sought to ensure a harmonized approach to the regulation of specific financial services businesses including digital assets/ virtual assets and VASP. The aim is to ensure that each jurisdiction has and established proper legal frameworks that meets the international standards of regulation and supervision by February 2023.

VFSC recognises the complexity of these tasks but it is aware of the fact that emphasis by international organisations on the standards revolves around the regulation, monitoring and supervision of the vehicles of financial services. Such complexity is not expected to ease at any moment, as the financial services environment is an evolving and innovative one and with it, meeting the necessary standards is essential to ensure the legitimacy of the conduct of businesses, upholding of jurisdictional reputation and maintaining the global financial stability.



VFSC therefore recognises that the scope of modern day financial services activities requires a robust modernized legal framework. There is a need for appropriate licensing procedures, appropriate regulatory and supervisory powers and the need for rigorous enforcement powers to ensure effective supervision of the financial businesses licensed by VFSC. It is therefore incumbent that all necessary legislative, regulatory and enforcement mechanisms under VFSC's authority are suitably framed and are in place to guide its performance in ensuring proper compliance with the established laws and regulations governing the conduct of financial services business in Vanuatu and also ensuring compliance with international regulatory standards.

VFSC therefore, is obligated to abide by established International standards of regulation and supervision in the functioning of its financial services industry. Adherence to those standards is essentially viewed as the minimum required obligation in preserving Vanuatu's financial services industry and strengthening its law enforcement machinery and promoting its international cooperation regime.

Digital Assets / Virtual Assets

Vanuatu had embarked recently on the journey to modernize and incorporate the Fintech related activities including digital assets into the legal framework based on the business opportunities that are presented to Vanuatu.

The Government undertook a number of fact-finding missions both internally and externally and has established a task Force (Distributed ledger Technology Task Force) –chaired by VFSC to proceed with the establishment of an appropriate legal framework governing the Digital assets and Fintech Strategy in Vanuatu.

In July 2021 Parliament passed an amendment to the Financial Dealers Licensing Act [CAP 70] and is now gazetted as **Financial Dealers Licensing (Amendment) Act NO. 9 of 2021**. This amendment allows for the grant of Class D license that allows the holder of that license to trade in digital assets. The amendment has effectively legalized Digital Assets as an asset class under the FDL Act and can be traded on a distributed ledger technology by the licensed financial dealers legally in possession of a class D license. Subsequent to the Amendment of the FDL Act, VFSC issued 12 guidelines in September 2021, and digital asset guideline was one of them.

VFSC, through the mandate of the Distributed Ledger Technology Task Force, recognises that Digital Asset or Virtual Assets is a very broad and complex business activity that would require a separate and robust legislative framework in order to capture the full context and associated risks of dealing in digital assets or Virtual assets. In that context, VFSC has engaged a TA who will assist the SLO in the drafting of the required legislation to meet the FATF requirements of Virtual Assets (VA) and Virtual Asset Service Provider (VASP).



The process towards the drafting of the legislation has already commenced and VFSC will now broaden its scope to include a risk-based approach for Virtual assets.

Virtual Asset (VA)

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. 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 (VASP)

Virtual asset service provider means any natural or legal person who is not covered elsewhere under the FATF Recommendations, and as a business, 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;
- 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.

In this context of virtual assets, “**transfer**” means to conduct a transaction on behalf of another natural or legal person that moves a virtual asset from one virtual asset address or account to another.

The proposed legislation will

- 1. Clarify the definitions of virtual assets and VASPs
- 2. Provide additional guidance for peer-to-peer transactions,
- 3. Update guidance on the licensing and registration of VASPs,
- 4. Provide additional guidance to private sectors on the implementation of the “travel rule”, FATF rec 16
- 5. Work with the other regulators on supervision roles of the VASPs sector and information-sharing and co-operation

In order to be fully compliant with the FATF Rec 25-21 the VFSC will work with the FIU and other regulatory bodies to ensure consequential amendments are also enacted in the AML/CFT Regulation and other risk based supervision frameworks. This is necessary to ensure effective regulation of the VASPs as well as to address Technical Compliance (TC) deficiencies as identified by the FATF.

The FATF requires that all VASPs are to be licensed and registered by 2023. In line with this requirement, VFSC will work with the other Regulatory bodies to:



1. Develop a licencing and registration regime for all VASP's and VA's;
2. Expand the scope of preventives measures to Virtual Assets Service Provider (VASPs) and to develop a "Travel Rule" Rec 16 in line with the FATF guidance on VASP; and
3. Align the FIU AML/CFT sector specific regulations with the legislative amendments to be made for AML/CTF.

New Regulations on VASP

The Commission is intending to draft the following legislations and regulations with the objective of regulating Virtual/Digital Assets, the issuance of NFT's, stable coins and ensuring DeFi projects are properly regulated.

The draft legislations would include the following:

1. Legislation on Digital Assets/ Virtual Assets & Virtual Asset Service Providers.
2. Regulation on Digital Asset/ Virtual and Digital Exchange.
3. Regulation on Digital Asset/ Virtual Asset Sandbox.

The industry and other stakeholders will be given opportunity to participate and provide their views during the consultation period to ensure a smooth process of the drafting and enactment of the legislation.

Yours faithfully


Branan KARAK
Commissioner

