

Legal Update

Virtual Assets – New Cayman Islands
Law Proposed

Guidance Note

Virtual Assets – New Cayman Islands Law Proposed

Introduction

The Cayman Islands are proposing a new framework to regulate the business of issuing and providing services with regards to virtual assets.

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The Cayman Islands are proposing a new framework to regulate the business of issuing and providing services with regards to virtual assets, by way of a series of changes to existing legislation and by the introduction of a new Virtual Asset Law (Service Providers) Law (together the “**Framework**”).

The intent of the proposed Framework, is that virtual assets themselves would not be regulated. Virtual assets in and of themselves are only a potential means to transfer or store value. Rather, the Framework should regulate the persons engaged in relevant financial business which use virtual assets. Accordingly, Cayman’s proposed Framework would apply only to persons engaged in virtual asset services as a business or in the course of business, for or on behalf of a third party. This distinction is to ensure that any requirements apply only to persons who exert a certain level of custody or control of the virtual asset, or the ability to actively facilitate the financial activity on behalf of a third party.

It is not the intent of the Framework to create a licensing regime around the issuance of virtual assets. However, an issuer will be bound by certain requirements that are intended to deter fraudulent issuances, such as the need to ensure that communication is accurate, that persons in control are fit and proper, and that registrants are taking reasonable steps to protect client data and assets. The notice, therefore, will help ensure that the regulatory authority is able to perform basic due diligence before the issuance takes place. Issuers will also be registered with the regulatory authority, providing additional transparency and accountability for those participating in an issuance.

The Virtual Asset (Service Providers) Law - Virtual asset trading platforms

Trading platforms are currently under no requirement to register or apply for a licence in Cayman, though many indicate that they are licensed or registered in other jurisdictions.

Cayman’s proposed Framework requires trading platforms to apply for licensing under the new The Virtual Asset (Service Providers) Law, and to comply with requirements including disclosures and onboarding users; monitoring and supervising trading activities, policies and procedures relating to operating the platform; and clearing and settling virtual asset trades. The Framework also allows the Authority to impose requirements relating to issuing virtual assets, such as what information must be disclosed to the participants of an issuance and how.

Some relevant definitions used in the proposed Framework are:

“virtual asset” means 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;

“virtual asset service” means the business of providing one or more of the following services or operations for or on behalf of a natural or legal person –

- a) exchange between virtual assets and fiat currencies;
- b) exchange between one or more other forms of convertible virtual assets; transfer of virtual assets;
- c) safekeeping or administration of virtual assets or instruments enabling control over virtual assets; or
- d) participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset;

“virtual utility token” means a digital representation of value which is not transferrable or exchangeable with a third party at any time and includes digital tokens whose sole function is to provide access to an application or service or to provide a service or function directly to its owner.

Regulatory Sandbox

Cayman’s proposed Framework includes a regulatory sandbox which puts in place a regime by which an innovative financial service (or technology that could affect a financial service) can be properly monitored and supervised by the regulatory authority in order to facilitate its adoption.

Securities Investment Business Law (“SIBL”)

Schedule 1 of SIBL will be amended by including under the definition of “security” virtual assets that represent, are derivatives of, or can be converted into, securities listed in Schedule 1. This change is to ensure that virtual assets which should be considered securities are defined as such, by applying the well-established definition of SIBL to virtual assets. This seeks to minimise regulatory uncertainty.

Mutual Funds Law

To ensure that funds are able to benefit from innovative technologies while complying with existing regulation, the definition of “equity interest” in The Mutual Fund Law (2020 Revision) will be revised to include any other representation of an interest that carries an entitlement to participate in the profits of gains of the company. This broad addition to the definition ensures that a fund may use traditional shares, partnership interests, virtual assets, or any other innovative form of conveying equity interest.

The Proposals are in a period of consultation and Stuarts will issue further guidance when we know more on the details including the timing for implementation of the Framework and any transitional provisions for existing entities.



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This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances. If you would like further information, please contact:

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