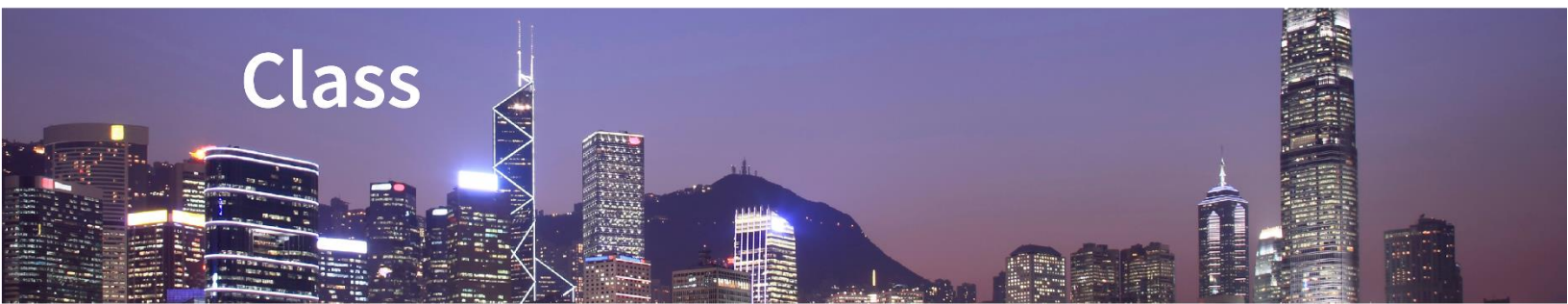


GUIDANCE NOTE

REGISTRATION OF VIRTUAL ASSET SERVICE PROVIDERS IN THE CAYMAN ISLANDS



World



Class



Responsiveness

STUARTS WALKER HERSANT HUMPHRIES



GUIDANCE NOTE

REGISTRATION OF VIRTUAL ASSET SERVICE PROVIDERS IN THE CAYMAN ISLANDS

The Virtual Asset (Service Providers) Law, 2020

The Cayman Islands Government passed the Virtual Asset (Service Providers) Law, 2020 (the “**Law**”) on 25 May 2020. This was accompanied with updates to a number of other laws including the Monetary Authority (Amendment) (No.2) Law, 2020, the Securities Investment Business (Amendment) Law, 2020 (the “**SIBL**”), the Mutual Funds (Amendment) (No. 2) Law, 2020 (the “**Mutual Funds Law**”) and the Stock Exchange Company (Amendment) Law, 2020 (the “**Stock Exchange Law**”).

Although passed, the provisions relating to different matters contained in the Law may be brought into effect at different times.

In Phase 1: Provisions of the Law which relate to enforcement, penalties or offences will be commenced on 31 January 2021. Persons who have not registered or notified the Cayman Islands Monetary Authority (the “**Authority**”) (by the Authority’s application deadline yet to be announced), but who are engaging in virtual asset services on and after 31 January 2021 will be subject to penalties and other enforcement measures.

Phase 2: which is expected to begin in June 2021, will bring into force the remaining provisions of the VASP Law, including the licensing requirement for virtual asset custodians and trading platform operators, the sandbox licensing regime and other elements of the VASP Law.

These laws form part of a regulatory framework to promote the development and use of innovative financial services (the “**Framework**”). The Cayman Islands Ministry of Financial services has stated that the Framework seeks to provide regulatory certainty and a solid foundation for legitimate financial services innovators who are operating in or from within the Cayman Islands, whilst also complying with emerging global standards surrounding virtual assets.

Relevant definitions used in the new Law 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 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:

- exchange between virtual assets and fiat currencies;
- exchange between one or more other forms of convertible virtual assets;
- transfer of virtual assets;
- virtual asset custody service; or



World



Class



Responsiveness

GUIDANCE NOTE

- participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset.

Who should register under the Law?

The Law applies to any persons involved in providing one or more of the 'virtual asset services' listed above. Note that non-transferrable virtual assets are excluded from definition of 'virtual asset' under the Law.

Any organisation offering these virtual asset services (including an existing STO), which does not require a licence (exchanges and custodians), will be required to register with the Authority and pay the required assessment and application fee set out below.

Who is considered a virtual asset service provider under the Law?

Under the Law, a person is a virtual asset service provider if the person is:

- (a) a company incorporated under the Companies Law (2020 Revision) (the "**Companies Law**");
- (b) a general partnership established under the Partnership Law (2013 Revision);
- (c) a limited partnership registered under the Partnership Law (2013 Revision);
- (d) an exempted limited partnership registered under the Exempted Limited Partnership Law (2018 Revision);
- (e) a foreign company registered under Part IX of the Companies Law;
- (f) a limited liability company formed and registered under the Limited Liability Companies Law (2020 Revision); or
- (g) a limited liability partnership formed and registered under the Limited Liability Partnership Law, (2017 Revision),

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 this Law or is an existing licensee that is granted a waiver by the Authority.

Under the Law, virtual service tokens are not virtual assets and a person or legal arrangement that provides services that involve virtual service tokens only are not required to have a licence or registration under this Law.

A registered person under the Law:

- (a) shall not issue virtual assets directly to members of the public in excess of the prescribed threshold (the "**Threshold**"); and
- (b) shall, prior to issuing virtual assets, submit an issuance request to the Authority in the prescribed form and obtain the approval of the Authority prior to the issuance.

The Threshold is yet to be determined by the Authority.



GUIDANCE NOTE

Where a virtual asset issuance is within the prescribed Threshold and involves the transfer or exchange of virtual assets or fiat currency, a registered person shall maintain records containing such information as may be specified by the Authority for every transaction of the issuance involving the public and the registered person shall make the records available to the Authority when requested.

Notwithstanding the above, a registered person may, engage one or more virtual asset trading platforms that are obliged entities or licensed under this Law for the issuance of newly created virtual assets over the prescribed threshold and the virtual assets shall be issued by way of these virtual asset trading platforms. Prior to engaging an obliged or licensed virtual asset trading platform for the issuance of newly created virtual assets, the registered person shall submit a virtual asset issuance request to the Authority in the prescribed form and obtain the approval of the Authority.

Factors the Authority will consider when reviewing a registration application

The Authority, in making a decision to register an applicant (or grant a licence, if applicable) under the Law will consider the following factors:

- (a) the size, scope and complexity of the virtual asset service, underlying technology, method of delivery of the service and virtual asset utilized;
- (b) the knowledge, expertise and experience of the applicant;
- (c) the procedures that the applicant has in place to combat money laundering, terrorist financing and proliferation financing;
- (d) the internal safeguards and data protection systems being utilized by the applicant;
- (e) the similarity of the virtual asset service to securities investment business as defined under the SIBL or to any other regulated activity under any of the other regulatory laws;
- (f) the risks that the virtual asset service may pose to existing clients, future clients, other licensees or to the financial system of the Cayman Islands;
- (g) whether the virtual asset service business involves the offering of virtual asset custodial services or the operation of a virtual asset trading platform;
- (h) the net worth, capital reserves and financial stability of the applicant;
- (i) the impact that the virtual asset service may have on financial services in the Cayman Islands;
- (j) the likelihood that the service will promote innovation, competition and benefits to consumers;
- (k) except for an applicant that is a fintech service provider, the applicant's ability to comply with the Law and the relevant requirements of the Anti-Money Laundering Regulations (2020 Revision);
- (l) the applicant's senior officers and trustees are fit and proper persons to hold the respective positions;
- (m) the applicant's beneficial owners are fit and proper persons to have such ownership or control; and
- (n) the applicant has paid the assessment fee.



GUIDANCE NOTE

Fee for Issue of Virtual Assets

The fee for the application to issue of virtual assets is US\$1,200 and the fee payable on registration and annually by 15 January each year is:

	Where the amount raised is expected to be less than US\$1 million	Where the amount raised is expected to be more than US\$1 million
for the issue of non-convertible virtual assets issued via a trading platforms or obliged entities only	US\$1,800	US\$4,200
for the issue of non-convertible virtual assets, directly to the public in this or another jurisdiction	US\$3,000	US\$6,000
for the issue of convertible virtual assets	US\$3,000 – US\$6,000 (depending on the Authority’s assessment of the nature, size, scope and complexity of the applicant’s virtual asset services)	US\$6,000 – US\$12,000 (depending on the Authority’s assessment of the nature, size, scope and complexity of the applicant’s virtual asset services)

For the purposes of this section the following definition apply:

“**obliged entity**” means a person or group of persons that provide a virtual asset service that is licensed or registered and is supervised for virtual asset services by a government regulatory body in another non-high-risk jurisdiction;

“**virtual asset trading platform**” means a centralized or decentralized digital platform:

- (a) which facilitates the exchange of virtual assets for fiat currency or other virtual assets on behalf of third parties for a fee, commission, spread or other benefit; and
- (b) which:
 - (i) holds custody of or controls virtual assets on behalf of its clients to facilitate an exchange; or
 - (ii) purchases virtual assets from a seller when transactions or bids and offers are matched in order to sell them to a buyer,

and includes its owner or operator, but does not include a platform that only provides a forum where sellers and buyers may post bids and offers and a forum where the parties



GUIDANCE NOTE

trade in a separate platform or in a peer-to-peer manner. For the purpose of the definition of “virtual asset trading platform”, where a single entity or group that controls the platform cannot be identified, the operator of the platform shall be deemed the owner of the entity under which the platform operates.

Securities Investment Business Law

Under the Framework, the SIBL has been 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 Funds Law has been 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.

Licensing for virtual asset exchanges

Under the Law and through updates to the Stock Exchange Law, a virtual asset trading platform can now obtain a licence and operate from within the Cayman Islands providing its only lists virtual assets.

Licensing for custodians

The Law has also introduced a specific licence for custodians of virtual assets. The Law includes disclosure requirements from the custodian as well as the ability of the authority to impose certain requirements around segregation of assets, insurance requirements and cyber security measures to ensure the protection of users of these services.



STUARTS WALKER HERSANT HUMPHRIES

GUIDANCE NOTE

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:

Chris Humphries

Managing Director

Tel: (345) 814-7911

chris.humphries@stuartslaw.com

Jonathan McLean

Partner

Tel: (345) 814-7930

jon.mclean@stuartslaw.com

Megan Wright

Senior Associate

Tel: (345) 814-7904

megan.wright@stuartslaw.com

Simon Orriss

Associate

Tel: (345) 814-7931

simon.orriss@stuartslaw.com

Stuarts Walker Hersant Humphries is a leading Cayman Islands legal practice with international reach. Offering a full range of corporate and commercial legal advice together with a constant client focus, our experienced attorneys assist our clients on their most significant and challenging commercial transactions, structures, liabilities and obligations.

Our proven track record in advising leading international Law Firms, Investment Managers, Investment Companies and High-Net-Worth individuals is a result of the deep understanding of our markets.

At Stuarts, we strive to build and maintain lasting relationships with our clients through the combined legal expertise and business acumen of our practice groups and by providing outstanding service.