

Virtual Assets (Service Providers) Act: Phase 2

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Virtual Asset (Service Providers) Act: Phase 2

The Cayman Islands Monetary Authority (“CIMA”) is getting ready to activate Phase 2 under the Virtual Asset (Service Providers) Act (2022 Revision) (“VASPA”), which may affect crypto funds in the Cayman Islands.

What are the key requirements under the VASPA Regime?

In general terms, the key requirements under Phase 2 of the VASPA Regime are that if a fund is specifically carrying on the provision of virtual asset custody services or the operation of a virtual asset trading platform, it must obtain a virtual asset service licence from the CIMA.

A registered mutual fund is still subject to the registration or licensing regime of VASPA and an unregistered single investor fund is also subject to Phase 2 of the VASPA Regime.

Custody

Virtual asset custody services require a licence under VASPA and are defined as the business of safekeeping or administration of virtual assets or the instruments that enable the holder to exercise control over virtual assets. This definition will likely capture all persons (including virtual wallet providers) that hold or have access to, for or on behalf of other persons, the private keys or similar attributes that can control a virtual asset.

Exchange and Transfer of Virtual Assets

Additionally, “virtual asset trading platforms” (“VATP”) will require a licence under VASPA. Broadly, a VATP is any digital platform that facilitates the exchange of virtual assets for a benefit (such as a fee or commission) and which either holds custody of or controls virtual assets on behalf of its clients to facilitate an exchange or matches bids and sales. It does not include a platform that only provides a forum where sellers and buyers may post bids and offers or, a forum where the parties trade in a separate platform or in a peer-to-peer manner. It also does not regulate funds that exchange, trade or transfer virtual assets for and on behalf of themselves for their own benefit.

Persons that do not operate a VATP but do carry out exchanges or transfers of virtual assets for or on behalf of others will not require a licence so long as there is no custody of the assets. However, they will be required to register under the VASPA.

For Example:

1. Anytime there is an exchange of crypto/fiat in the hands of the investor (as opposed to a subscription in fiat and redeeming in fiat), the fund should look carefully at the registration or licensing under VASPA.
2. If you are accepting fiat as a subscription for shares and using the fund platform to return crypto assets to the investor on redemption (for a management fee) and this is being conducted at the direction of a sole investor, this is likely to be a VATP and require a licence.



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3. If you are accepting fiat as a subscription for shares and using the fund platform to return crypto assets to the investor on redemption (for a management fee) but this is NOT being done at the direction of the investor (but as a redemption in kind and in the normal business of fund investment business), this is less likely to be a VATP, but, the fund would likely be conducting Virtual Asset Services (the exchange of virtual assets) on behalf of others and would be required to register under VASPA. This would also apply if the fund accepts crypto as a subscription in kind for shares and returned fiat or a different crypto asset to the investor).
4. If there is an exchange in the hands of the investor (as opposed to paying in fiat and redeeming in fiat), it is likely the fund would be conducting Virtual Asset Services (the exchange of virtual assets) on behalf of others and would be required to register under VASPA.
5. If the fund accepts fiat as a subscription for shares and redeems the shares in fiat only and only trades crypto assets in the business of operating the fund and it is not conducting custody services, it is not likely the fund would need to register or be licensed under VASPA.



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What is the next step?

It is important to first assess whether your fund is carrying on a licensed activity. If your fund is operating as a VATP, (for example if the investors in your fund are receiving a different form of crypto assets than was transferred to the fund on their initial subscription (including the exchange between fiat and crypto)) or your fund is specifically carrying on the provision of virtual asset custody services then we need to analyze the need to register or be licensed under VASPA. Please reach out to us for advice.

When do entities have to comply with the VASPA Regime?

Phase 2 - The requirements in respect of licensing are expected to commence in 2022. When Phase 2 comes into effect, the licensing regime will commence and entities engaged in virtual asset custody services or in the operation of virtual asset trading platforms will be required to apply for a licence.

Ongoing Requirements

Persons registered or licensed under VASPA will be subject to ongoing requirements. These include the registrant or licensee:

- (i) undertaking audits of their AML systems and procedures at the request of CIMA;
- (ii) preparing audited accounts and submitting those to CIMA annually;
- (iii) making sure its senior officers and beneficial owners are fit and proper persons;
- (iv) obtaining prior approval from CIMA to appoint senior officers or AML compliance officers;

- (v) providing certain notices to CIMA confirming their compliance with the AML Regulations and data protection laws and ensuring that all communications relating to the virtual asset service are accurate;
- (vi) designating an employee as the officer with responsibility for the procedures for combating money laundering, terrorist financing and proliferation financing; and
- (vii) obtaining prior approval from CIMA before issuing or transferring shares or other equity interests totalling 10% or more of the registrant or licensee.

Further requirements apply for custody providers and operators of VATPs.



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Contact

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 us at info@stuartslaw.com or email one of attorneys below:



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