



VANUATU FINANCIAL
= SERVICES COMMISSION =

Bill for the Virtual Assets and Virtual Asset Services Providers Act No. of 2023

Purpose of the Act

Part 1

Purpose of the Act :

- establishment of virtual assets, virtual tokens and virtual assets service providers.
- registration of virtual assets and virtual assets services providers.

Parts

Part 1 - Preliminary Matters

Part 2 - Administration

Part 3 - Licensing of Virtual Asset Service Providers (VASP)

Part 4 - Requirements of a VASP Licensee

Part 5 - Licensing of Issuer of Initial Token Offering

Part 6 - Requirements of Initial Token Offering Licensee

Part 7 - Enforcement

Part 8 - Disclosure of Information and Obligation to Report

Part 9 - Offences and Penalties

Part 10 - Miscellaneous Provisions



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Part 1 - Preliminary Matters

Terminology of VASP

Beneficiary - Person that will own the virtual asset on completion of a transfer.

Fit and proper person - whether or not convicted or criminal proceeding in progress, sanction list of UN.

Initial token offering (ITO) - issuer of ITO offer to sale to the public **virtual token** in exchange for **fiat currency**.

Issue of ITO - means a person who has a licence granted under this Act.

Key person - UBO, controller, director, manager, compliance officer, or chief IT Officer.

Manager - Chief executive Officer.

Originator -

1. person who place order with a virtual asset service provider for the transfer of virtual asset,

Terminology of VASP

2. VASP - carried out transfer on behalf of a client or third party or client and third party who own the Virtual Asset (VA) before the transfer.

VA - digital representation of value that may be digitally traded and functions as a medium exchange, unit of account, or store value.

Virtual Asset Exchange - Centralized or decentralized virtual platform whether in Vanuatu or in another foreign jurisdiction which facilitates the exchange of VA for fiat currencies or other VA on behalf of third party for a fee.

Virtual Asset Service Provider - conduct business or more operations on behalf of another person on these business transactions:

1. Exchange between VA and fiat currencies
2. Exchange between one or more forms of VA, transfer VA, safekeeping VA or instrument enabling control over VA,
3. Participation, provisions, and financial services related to an issuer's offer and sale of VA

Terminology of VASP

Virtual token - cryptographically secured digital representation of a set of right.

Virtual Asset Exchange - central or decentralized virtual platform facilitating exchange of virtual assets for fiat currency or other VA, or hold custody, or control VA for its clients to facilitate an exchange or purchase VA from a seller.

White paper - issuer of a initial token provide a summary disclosing information such as the reasoning behind the project, the utility and use case, the blockchain architecture behind it, the token distribution, and utility of the token, the road map, and the team behind it.



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Part 2 - Administration

Function of the Commissioner

- Advise the government on matter relating to the virtual assets and other provisions of the Act.
- Register VA, Monitor the activities of the VASP.
- Ensure that the requirement of the AML/CTF is implemented within the framework of the Act.
- Maintain a register of VASP and ITO.
- Issue Guidelines.
- Promote investors and consumers education to facilitate innovation and development in respect to the Act.

Power of the Commissioner

The Commissioner has the power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions.

Managers

Requirement for becoming a manager in a VASP:

- Application made in prescribed forms and the Commissioner must within 120 working days provide a decisions or seek further information.
- Manager must be fit and proper according to the Act and Guideline.
- Citizen and non citizen are eligible to apply except that non citizen must reside in Vanuatu for not less than 12 consecutives months after being approved as a manager.
- Manager must have at least 1 year experience in the work of VASP or ITO.
- Must manager must have an office in Vanuatu.
- If the Commissioner refuses to approve then it must provide a reason for refusing its approval.

Termination of Manager

Grounds of termination:

- Manager carry activities which consequently bring Vanuatu into disrepute.
- Not a fit and proper person.
- Contravenes the Act, Regulations, or AML/CTF Act.
- Likely to become insolvent or bankrupt.
- Failed to comply with the directives of the Commissioner.
- Provide false, inaccurate or misleading information.

Notice of termination

- Commissioner must give notice of his intention of termination and grounds of termination.
- 14 days time frame is provided for the managers to respond to the notice and its grounds of termination.
- Alternatively the Commissioner has a discretion to terminate the manager without following above procedure if he view it is necessary. In that context the termination takes effect on that date stated in the termination notice.
- Notice of termination will be published in the newspaper and other manner.

Director

Requirement for becoming a director:

Reside in Vanuatu and non citizen reside in Vanuatu for no less than 12 months after being approved.

- No less than 2 years experience in VASP.
- The office of the director is located in Vanuatu.
- Never received a criminal conviction nor a suspended sentence.
- Not declared as bankrupt.
- Any issue with the Fit and Proper person Guidelines.

Termination of director

The grounds for termination:

- Involved in activities that bring Vanuatu into disrepute.
- Not fit and proper person.
- Contravention of the Act or its regulations.
- Contravention of AML/CTF Law.
- Is or likely to become insolvent or bankrupt.
- Failed to comply with directives given by the Commissioner.
- Give false, inaccurate or misleading information to the Commissioner.

Fintech Sandbox Utility

- Company intending to carry VASP and Innovative Fintech must apply to the Commission for approval.
- Company must have 1 years experience in Fintech Sandbox utility.
- Company intending to apply fall under these category:
 - Virtual assets broker dealer, Virtual asset wallets services, Virtual asset custodian, Virtual asset advisory services, Virtual asset exchange and Product that fall under licences A, B, C of the FDL Act.
- Period of activities is 12 months upon renewal.



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Part 3 - Licensing of Virtual Asset Service

Virtual Assset to be licensed

- A person carrying VASP activities must be licensed.
- Breaching of the provision will amount to conviction of VT 25 million (AUD 250,000) or imprisonment of 15 years for an individual and for corporate to a fine VT 250 million (AUD 3,152,281.20).

Class of Licence

Classes:

D - exchange between virtual assets and fiat currencies or between one or more forms of virtual assets.

D1 - authorise transfer of virtual assets.

D2 - authorise safekeeping of virtual asset or enabling control over virtual asset.

D3 - authorise participation in the financial services to both or either an issuer's offer or sale of virtual assets.

D4 - authorise a bank to operate the exchange between asset and fiat currencies and safekeeping or control over virtual assets.

* For Bank Supervised by RBV, it need to seek the approval of RBV prior applying for D.4.

Application for a VASP

Requirement of applications:

- Application in the prescribed form and fees.
- State the class or classes of VASP.
- State any third party.
- Proposal in the Statement of the services.
- Proof of physical presence.
- Key persons.
- Source of funds details.
- Managers application.

Application for a VASP

Requirements for application:

- Commission may require the applicant to provide additional information for assessing the application.

Assessment of the application:

- ✓ Financial Information and documents must viable.
- ✓ Key persons are fit and proper.
- ✓ Capital source of funds acceptable.
- ✓ Officers, registered agent, and person acting on instruction are fit and proper.

Granting or Refusal

- The Commissioner must grant or refuse the application by considering the following:
 - ✓ Business is financially viable.
 - ✓ Services provided by the applicant will not bring Vanuatu into disrepute as an international financial center.
 - ✓ All key persons are fit and proper person.
 - ✓ Source of funds used to pay capital of the applicant is acceptable.
 - ✓ Information supplied by the applicant is complete, not false or misleading.
 - ✓ Prescribed fees are paid.
 - ✓ Additional information and documents are provided within the specified time.
 - ✓ The applicant is compliant with the requirements of the Act, Regulations, and Guidelines.

Revocation or impose further conditions

The Commissioner, after granting the licence, may at any time revoke a VASP licence condition or impose further conditions on a VASP licence by conducting the following process:

- Notifies the VASP licensee of its intention to revoke or impose further conditions on VASP licence.
- The Licensee has 14 working days after receiving the notice to respond to the Commissioner to why the Commissioner should not revoke conditions or impose further conditions.
- If the licensee fails to provide reasons or the Commissioner is of the opinion that the licensee has failed to show cause as to its reason then it may revoke or imposed further conditions.

Suspension of the VASP licence

The Commissioner may suspension a VASP licence if he is satisfied:

- Breach of Conditions, Act, or Regulations.
- Not fit and proper person.
- Provided false, misleading, or inaccurate.
- Obtaining VASP licence by making false statement
- Licensee failed to operating the business after the granting of the licence.
- Licensee has ceased to provide VASP service.

- Prior suspending the licence, A notice of non compliance will follow and specify:
 - the breach.
 - The penalty amount imposed.
 - Period of payment.
 - Period of rectifying the breach.

Suspension of the VASP licence

If licensee fails to rectify the breach or fail to pay the penalty within the specified period then the Commissioner must:

- Serve a notice of suspension to the licensee; and
- Allow the licensee to provide reasons why the VASP licence should not be suspended.
- If the commissioner is satisfy with the reasons provided he will not proceed with the suspension or in the contrary he will apply the suspension on the VASP licence.
- Consequently, all operation must ceased until the Commissioner lift up the suspension.

Revocation of the licence

The Commissioner may revoke a VASP Licence if he is satisfy that the licensee:

- Contravene the AML/CTF law
 - Convicted of an offence under this Act or the Regulation.
 - Is not longer a fit and proper person.
- ✓ The Commissioner must give the VASP licensee a written notice and specifying the grounds on which he intend to revoke the licence.
- ✓ VASP licensee must have opportunity to make representation in writing indicating the reasons for not revoking the licence within a determined time provided by the Commissioner.

VASP Licensee obligation to notify of changes to the Commissioner

- VASP licensee has an obligation to notify any changes to the Commissioner 14 days after the change occurred.
- Failure of which, the Commissioner may revoke the VASP licence.

Register of VASP Licence

The commissioner must keep a register of VASP Licensees with the following details:

- VASP licensee's name and place of business.
- Class of VASP licence.
- Detail of services provided.
- Any other information required under the Regulations.

- **NB: these information are public information and can be inspected.**



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Part 4 - Requirement of a VASP Licensee

Requirement of a VASP Licensee

VASP licensee has the following obligations while carrying on the business:

- Maintain a capital and financial requirement.
- Provide an annual audited account as required by the Regulations.
- Segregation of clients funds from company funds and no co-mingling of monies.
- Virtual assets under its custody are subjects to the claims of its creditors.
- The business activities contain are adequate and appropriate for the scale and nature of the business.
- Give the written notice to the Commissioner when it is aware of any market manipulation or abusive trading.
- Identifies and detect any suspicious price spikes or anomalies.
- Prevent and monitor abusive trading strategies.
- Take immediate step for the restriction or suspension of trading discovery of market manipulative or abusive trading activities, including temporary freezing accounts.

Issuing of White Paper

White Paper (WP) is VASP report or guide explaining the purpose of the project with explaining details of road map, funding, and team working in the project of VASP.

WP is usual initiated by an issue of initial token which will allow potential purchasers to make inform decision on investing.

WP should include the following:

- Description of key person.
- Objective of the initial token offering.
- Key characteristic of the virtual token.
- Business plan.
- Target amount to be raised and use of the proceeds raised.
- Conditions, functions, rights, attached to the token.
- Determination of the accounting, the valuation, and methodology of the token.
- Associated challenges, risk, and mitigating features.
- Must not make false or misleading marketing claims on social media and other platforms.

Issuing of White Paper

- Information in relation to distribution policy of virtual tokens.
- Technical information in relation to the protocol, platforms, or application of virtual tokens
- Any application of VAT
- Information about person underwriting or guaranteeing the offer.
- Any restrictions on the free transferability of the virtual token.
- The methods of payment.
- Details of refund mechanism.
- Description of the AML/CTF procedure of the issuer of the initial token offering
- The intellectual property right associated with the offering.
- Audited financial Statements of the Issuer of the initial token offering.
- Disclaimer statement waiver the responsibility of the VFSC on any error or misleading information in the white paper.
- Reminder note that the Reserve Bank of Vanuatu does not recognise virtual token as legal tender.

Controller and Beneficial Owner

When a controller and Beneficial owner are not fit and proper person, the Commissioner will give them opportunity to make representation. In addition to the representation, the Commissioner may issue any of the following directive:

- To dispose of the shareholding in the VA business.
- To prohibit such person any voting rights in respect to his shares in VA.
- VASP Licensee to take remedial measures as the Commissioner may determine.

Purchaser Right

- If an ITO licensee publishes and makes amendment in its white paper and the content is a misrepresentation in nature, then the purchaser has the right to rescind his subscription or claim damages.
- A purchaser is entitled to withdraw his purchase provided he gave written notice to the ITO licensee. The purchaser has 10 working days after the day of agreement to purchase the virtual token to initiate his withdrawal.
- If a purchase a complied with the requirement, then the issuer of initial token is obliged to refund the amount paid within 5 working days of the purchaser request.



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Part 7 - Enforcement

Appointment of inspector

The Commissioner may appoint an inspector to investigate and report to him:

- The nature, conduct or state of a licensee's business or a particular aspect of the business.
- The ownership or control of the licensee.
- Failure to comply with the Act or Regulation.
- Received request from foreign regulator authority.

The Commissioner must inform the licensee that an inspector has been appointed or if the Commissioner believe the disclosure of the inspector may prejudice the investigation then he will not inform the licensee.

Entry of Premises

If an inspector enter into the premise:

- At the any time, he may require the consent of the occupier.
- Otherwise he may enter during the business hours or when the premises is open to the public.

Upon entering into the premises:

- the inspector must produce his identity card and inform the occupier the purpose of his entry.
- Any seized may be used as evidence in Court.
- That his consent may be refused.
- Avoid any damage or inconvenience
- Not remaining in the premises when no longer require and leave the premises so far as practicable in the same condition as it was found prior.

Power of Entry

- The inspector may do the following:
 - inspect and take copies of any book, accounts, and documents of the licensee (current or former) related to the services provided.
 - Require information from director of the licensee.
 - Seize anything believed to be necessary in order to prevent its concealment, loss or destruction.
 - Require the occupier to give inspector help to exercise a power under this Act.
 - The occupier is require to assist the inspector in carrying his duty and if necessary provide an office space and reasonable access to office services.
 - Produce the receipt of thing seized and return to the licensee the thing seized.

Search Warrant

- The Commissioner or an authorized officer may apply to the Court for Search Warrant if:
 - To enter into the premises or any premises that the officer has reasonable believe that it contain document relating to the business of the licensee.
- The court will grant the search warrant if it is satisfied that:
 - There is important evidences connected with an offence under the Act.
 - Failure to obtain the warrant would prejudice the investigation.
 - Reasonable likelihood that the documents sought on the premises could be altered, removed, or destroyed.



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Part 8 - Disclosure of Information and Obligation to Report

Disclosure of information to foreign agency

- The Commissioner may disclose information to foreign agency if:
 - the government of Vanuatu has entered into an agreement with the government of the foreign country about exchange of regulatory information.
 - The Commissioner is satisfied that the information is subject to adequate legal restriction on further disclosure.
 - The information is supplied within the term of the agreement.
 - Request for the information must come from the foreign agency.

Disclosure of information to foreign agency

- The Commissioner may provide information to a foreign agency with whom the government of Vanuatu has no agreement on exchanging the information based on the following criteria:
 - That the requesting entity seek the information for discharging its duty under its respective legislation.
 - That the requesting entity intend to perform its duty under its AML and CTF Regulation and Supervision laws.
 - That the requesting entity intend to discharge its duty on financial sanctions laws.
 - Investigation for prosecution purposes.
 - Tax evasion laws.

Disclosure of information to foreign agency

In deciding whether or not to disclose the information the commissioner must be satisfied that:

- The requested entity will agree to assist the Commissioner with the cost of supplying information.
- The request entity has and would provided similar assistance to the Commissioner.
- It is in the interest of Vanuatu as a reputable financial center to disclose the information.

Quarterly Report

The licensee must provide a quarterly report to the Commissioner to satisfy its compliance with the Act, Regulations, and Guidelines.

The report must be prepared by an accountant who has more than 5 years of experience in VASP.

The licensee is responsible for the cost of the report.

Failure to present this report will cost the licensee VT 10,000 per day after the report is due.

Audit Report

- The licensee must within 3 months after the end of a financial year provide an audit report.
- The Commissioner may require information from the auditor of the licensee or matter arising from the auditor report.
- The Commissioner may demand the consolidated account from the auditor whenever it is required.
- If the licensee or auditor failed to provide the report or information as per the Act then they may be penalized to pay a fine of VT 100,000 per day after the report is due.
- The auditor or licensee liable to pay the fine will be given 30 days to settle the fine.

Segregation of assets, keeping of records, Minimal capital



- A licensee must ensure that asset and liabilities of the licensee's clients:
 - Identified and accounted for separately from each other.
 - From the licensee's assets and liabilities as prescribed under the Regulation.
 - A Licensee must keep proper books and records, in the manner required by the Regulations.
 - A licensee must at all times maintain sufficient assets to meet the minimum financial resources requirements, as prescribed by the Regulations.



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Part 9 - Offences and Penalties

Offences

- Offences: A person who recklessly or negligently makes any representation under this Act that knows to be false or misleading commit an offence and is liable upon conviction to a fine not exceeding VT 15 M or 10 years imprisonment or both and for body corporate a fine not exceeding VT 250 M.
- A person who obstructs the Commissioner or any person authorized by the Commissioner in the performance of his duty commits an offence and liable to a fine not exceeding VT 10 M or imprisonment for 1 year.
- A person who provide false or misleading information is liable on conviction to a fine not exceeding VT 1,000,000 or imprisonment not exceeding 1 year.

Penalties

- The Commissioner may serve a penalty notice on the person if:
 - He commit an offence under the Act.
 - A penalty notice may be served on him. Such notice implies that the matter will not be determined by the court but rather the person served will pay within the a time frame with the amount of the penalty.
 - The payment of penalty notice does not imply admission in any civil proceeding.
 - If the amount is paid under the section, then no person is liable to any further proceeding arising out for the alleged offence.



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Part 10 - Miscellaneous

Immunity

- The Commissioner, inspector, or authorized officer are immune from civil or criminal proceeding if they have done or omitted to be done in good faith in the performance of his functions under the Act.
- However, their immunity is waived if they acted in bad faith in the performance of the duties.

Guidelines and Regulations

- The Commissioner may make written guidelines including setting out the criteria of fit and proper person.
- The Minister may, on the advise of the Commissioner, make Regulations prescribing all matters required or permitted under the Act.

THE END

Tankio tumas

Eni Kwesten?