

CAYMAN ISLANDS



**VIRTUAL ASSET (SERVICE PROVIDERS)
(AMENDMENT) BILL, 2024**

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Financial Services and Commerce (FSC)

Consultation

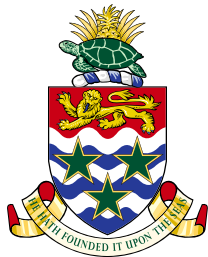


(To be completed on settling of policy)

**Memorandum of
OBJECTS AND REASONS**

Consultation

CAYMAN ISLANDS



VIRTUAL ASSET (SERVICE PROVIDERS)
(AMENDMENT) BILL, 2024

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Consultation



CAYMAN ISLANDS



VIRTUAL ASSET (SERVICE PROVIDERS) (AMENDMENT) BILL, 2024

A BILL FOR AN ACT TO AMEND THE VIRTUAL ASSET (SERVICE PROVIDERS) ACT (2022 REVISION) TO AMEND DEFINITIONS AND PROVIDE NEW DEFINITIONS OF TERMS USED IN THE ACT; TO IMPROVE THE SUPERVISION OF CERTAIN VIRTUAL ASSET ACTIVITIES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

1. (1) This Act may be cited as the Virtual Asset (Service Providers) (Amendment) Act, 2024.
- (2) This Act shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Act and in relation to different matters.

General amendments to the Virtual Asset (Service Providers) Act (2022 Revision)

2. The *Virtual Asset (Service Providers) Act (2022 Revision)*, in this Act referred to as the “principal Act”, is amended as follows —
 - (a) by deleting the cross-heading “*Directions to apply for licence*” that appears after section 12 and substituting the cross-heading “*Directions to apply for licence or registration*”; and



- (b) by deleting the cross-heading “*Existing licensee*” that appears after section 14 and substituting the cross-heading “*Supervised person*”.

Amendment of section 2 - interpretation

3. The principal Act is amended in section 2 as follows —

- (a) in subsection (1) as follows —
- (i) by deleting the following words and their definitions —
- (A) “**existing licensee**”;
 - (B) “**fintech service**”;
 - (C) “**operator**”; and
 - (D) “**originator**”;
- (ii) in the definition of the words “**fiat currency**”, by deleting the words “that is issued” and substituting the words “that is issued exclusively”;
- (iii) by inserting, in the appropriate alphabetical sequence, the following definitions —
- “**convertible virtual asset**” means a virtual asset which may be accepted, exchanged or transferred in exchange for another virtual asset or fiat currency by way of any type of programme, feature of the virtual asset or third-party intermediary;
- “**financial services business**” shall have the meaning assigned by section 2 of the *Monetary Authority Act (2020 Revision)*;
- “**fintech service**” means a service that uses innovative technology to improve, change or enhance how a financial services business is conducted but is not a virtual asset service;
- “**originator**”, in relation to a transfer of virtual asset, means a person, whether natural or legal, who places an order with the virtual asset service provider for a virtual asset transfer;
- “**owner**” or “**operator**”, in relation to a virtual asset trading platform, means —
- (a) the single entity or group which exerts management control over the platform;
 - (b) where a single entity or group which exerts management control is not identifiable, either —
 - (i) the entity under which the platform operates; or
 - (ii) the entity under which the platform may contract with third parties; or



(c) where an entity or group under paragraph (a) or (b) is not identifiable, the entity or group that provides the services offered by the platform to the users of the platform; and

“supervised person” means a person that is licensed or registered under any of the other regulatory laws and is not licensed or registered under this Act;” and

(b) by repealing subsection (3).

Amendment of section 3 - meaning of “virtual asset service provider”

4. The principal Act is amended in section 3(1) by deleting the words “an existing licensee” and substituting the words “a supervised person”.

Amendment of section 4 - registration or licence required

5. The principal Act is amended in section 4(1)(c) by deleting the words “an existing licensee” and substituting the words “a supervised person”.

Amendment of section 5 - fees

6. The principal Act is amended in section 5 as follows —

(a) by repealing subsections (1), (2) and (3) and substituting the following subsections —

“(1) An application for registration, waiver or a licence shall be accompanied by the prescribed non-refundable assessment fee.

(2) On the Authority’s decision to approve an application for registration, waiver or a licence, the Authority shall notify the applicant of its approval and the applicant shall pay the prescribed application fee.”;

(b) in subsection (4), by deleting the words “of the fee by the Authority” and substituting the words “by the Authority of the approval of the application”; and

(c) by repealing subsection (7) and substituting the following subsection —

“(7) The Authority may, for good cause, waive any surcharge imposed under subsection (5) or administration fee under subsection (6)(c) or both.”.

Amendment of section 6 - application for registration

7. The principal Act is amended in section 6 as follows —

(a) in subsection (1) as follows —

(i) by deleting the words “an existing licensee,” and substituting the words “a supervised person who has been granted a waiver for registration or a licence under section 16”;

- (ii) in paragraph (a), by deleting the words “under this Act; or” and substituting the words “under this Act;”;
- (iii) in paragraph (b), by deleting the words “under this Act,” and substituting the words “under this Act; or”; and
- (iv) by inserting after paragraph (b) the following paragraph —
 - “(c) has been directed by the Authority to apply for registration under this Act.”;
- (b) by repealing subsection (2) and substituting the following subsections —
 - “(2) The Authority, in determining whether to approve the application from a person in subsection (1), shall consider whether —
 - (a) the applicant should apply instead for a virtual asset service licence or a sandbox licence as the virtual asset service is one for which a licence is required; or
 - (b) the applicant should apply instead for registration or a licence under one of the other regulatory laws.
 - (2A) The Authority may —
 - (a) impose conditions on an applicant for registration at the time of application or at any time thereafter, as the Authority may consider appropriate having regard to the nature, risk and scale of the business; or
 - (b) refuse registration of an applicant.
 - (2B) An applicant for registration shall not be registered unless the applicant has satisfied the Authority that the applicant’s shareholders, directors and senior officers are fit and proper persons.”;
- (c) by repealing subsection (6) and substituting the following subsections —
 - “(6) If a registered person wishes to engage in activities for which a licence is required under this Act, the registered person shall apply for a licence and the Authority shall cancel the registration if the licence is granted.
 - (6A) A registered person who at the commencement of the *Virtual Asset (Service Providers) (Amendment) Act, 2024* is engaged in an activity for which a licence is required shall apply for a licence within thirty days of the commencement.”; and
- (d) in subsection (7), by deleting the words “or regulated in the Islands” and substituting the words “in the Islands”.

Amendment of section 8 - application for virtual asset service licence

- 8.** The principal Act is amended in section 8 as follows —



- (a) in subsection (1), by repealing paragraph (c) and substituting the following paragraph —
 - “(c) is a supervised person conducting virtual asset services and has been directed by the Authority to obtain a virtual asset service licence; or”;
- (b) in subsection (2)(c), by deleting the words “applicant to apply for a licence” and substitute the words “applicant to apply for a licence or registration”;
- (c) in subsection (4) as follows —
 - (i) by deleting the words “the matters set out in section 22 and”;
 - (ii) by inserting after paragraph (a) the following paragraph —
 - “(aa) the applicant has satisfied the Authority that the applicant’s shareholders, directors and senior officers are fit and proper persons.”; and
 - (iii) by deleting the words “under section 5(3)”;
- (d) by repealing subsection (5) and substituting the following subsections —
 - “(5) On payment of the application fee, the Authority shall make a determination on the application and, where granted, the licence shall set out the specific service that the licensee is permitted to carry on.
 - (5A) The Authority may impose conditions on an applicant for a licence at the time of application, or at any time after, as the Authority considers appropriate having regard to the nature, risk and scale of the business.”; and
- (e) in subsection (8)(a), by deleting the words “regulatory requirements on a virtual asset” and substituting the words “requirements on a virtual asset”.

Amendment of section 9 - general requirements for virtual asset service providers

9. The principal Act is amended in section 9 as follows —

- (a) in subsection (3) as follows —
 - (i) by repealing paragraph (a) and substituting the following paragraph —
 - “(a) have no less than two directors at all times;”;
 - (ii) by repealing paragraph (c) and substituting the following paragraph —
 - “(c) ensure the accuracy of all disclosures, advertising materials and communications relating to the virtual asset service with clients and members of the public;”;
 - (iii) by inserting after paragraph (c) the following paragraphs —

- “(ca) carry on virtual asset services only in accordance with the information given in its approved application for registration or a licence and in the business plan;
- (cb) seek the prior written approval of the Authority to make a change to the approved business plan and information, other than personal information, provided in the approved application for registration or a licence;”;
- (iv) in paragraph (d), by deleting the words “proliferation financing;” and substituting the words “proliferation financing; and”;
- (v) in paragraph (e), by deleting the words “systems and procedures; and” and substituting the words “systems and procedures.”; and
- (vi) by repealing paragraph (f);
- (b) in subsection (4)(c)(ii), by deleting the words “or establishing a physical presence” and substituting the words “, subsidiary, agency, branch or other physical presence”;
- (c) by repealing subsection (5) and substituting the following subsection —
 - “(5) When performing a transfer of virtual assets, a virtual asset service provider shall —
 - (a) collect and maintain information on the beneficiary and originator of the transfer in accordance with the *Anti-Money Laundering Regulations (2023 Revision)*;
 - (b) comply with any other requirements relating to virtual asset service providers set out in the *Anti-Money Laundering Regulations (2023 Revision)*; and
 - (c) collect and retain any information regarding the beneficiary and originator or take any additional measures regarding the virtual asset transfer as may be specified by the Authority,and the records shall —
 - (i) be made available, at the request of the Authority or any competent authority, through the virtual asset service provider’s registered office; and
 - (ii) where a request for information is made under subparagraph (i), be provided by the virtual asset service provider within forty-eight hours of receipt of the request.”;
 - (d) in subsection (7), by deleting the words “to ensure compliance with the *Anti-Money Laundering Regulations (2020 Revision)*”; and
 - (e) by inserting after subsection 9 the following subsection —
 - “(9A) Approval granted under subsection (8) —



- (a) lapses if the senior officer, trustee or the anti-money laundering compliance officer becomes bankrupt or is convicted of an offence involving dishonesty; and
- (b) may be revoked by the Authority where the Authority has sufficient cause to believe that the senior officer, trustee or the anti-money laundering compliance officer is no longer able to perform the functions required by the appointment.”.

Amendment of section 10 - requirements: virtual asset custody services

10. The principal Act is amended in section 10 as follows —

- (a) in subsection (1) as follows —
 - (i) by repealing paragraph (c) and substituting the following paragraph —

“(c) disclosures to clients concerning —

 - (i) the transparency of operations including the risks associated with custodial arrangements;
 - (ii) internal safeguards;
 - (iii) the methods of access to virtual assets held;
 - (iv) insurance arrangements;
 - (v) regulatory obligations;
 - (vi) grievance procedures; and
 - (vii) third party sharing of clients’ information;”;
 - (ii) in paragraph (d), by deleting the words “cybersecurity measures; and” and substituting the words “cybersecurity measures;”;
 - (iii) by inserting after paragraph (d) the following paragraphs —

“(da)requirements for the manner in which virtual assets are held and maintained on behalf of clients, including any necessary arrangements regarding the safe custody of virtual assets;

(db)requirements for the provision of products and services which derive their value from underlying virtual assets; and”;
- (b) in subsection (3) as follows —
 - (i) in paragraph (c), by deleting the words “proceeds relating to” and substituting the words “proceeds or benefits relating to”; and
 - (ii) in paragraph (e), by deleting the words “adequate safeguards” and substituting the words “adequate safeguards including safeguards”.

Amendment of section 11 - requirements: virtual asset trading platforms

11. The principal Act is amended in section 11(8) by deleting the words “and is liable” and substituting the words “and is liable on”.

Repeal of section 13 - directions to apply for licence under this Act

12. The principal Act is amended by repealing section 13.

Repeal and substitution of section 14 - directions to apply for licence under another regulatory law

13. The principal Act is amended by repealing section 14 and substituting the following section —

“Directions to apply for licence or registration under another regulatory law

14. (1) The Authority may require a virtual asset service provider registered or licensed under this Act to apply for a licence or registration under any of the other regulatory laws, where the virtual asset service provider is carrying on business activity —
- (a) that is materially similar to financial services business for which there is a licensing or registration regime under any of the other regulatory laws that provides sufficient oversight and supervision for that business activity; or
 - (b) that requires additional oversight that is provided for in a licensing or registration regime under the other regulatory laws.
- (2) On approval of a license or registration under any of the other regulatory laws in respect of a virtual asset service provider carrying on business activity referred to in subsection (1)(a), the Authority shall cancel the registration or revoke the licence under this Act.
- (3) Where a virtual asset service provider is carrying on business activity referred to in subsection (1)(b), the licence or registration approved under any of the other regulatory laws is in addition to the licence or registration under this Act.”.

Repeal and substitution of section 15 - notice by existing licensee

14. The principal Act is amended by repealing section 15 and substituting the following section —

“Application by supervised person

15. (1) A supervised person who wishes to carry on virtual asset service shall apply to the Authority, in the manner specified by the Authority, for either of the following —
- (a) a virtual asset service licence;

- (b) registration; or
- (c) a waiver of licensing or registration requirements under this Act in accordance with section 16,

setting out in detail the nature and scope of the virtual asset service that the supervised person wishes to carry on.

- (2) The supervised person shall provide any additional information as the Authority considers necessary in order for it to make a determination under this section.
- (3) The Authority in considering an application under this section shall consider the following —
 - (a) the virtual asset service to be provided;
 - (b) the regulatory law under which the supervised person is currently licensed or registered;
 - (c) whether the virtual asset service is materially different from the activity for which it is registered or licensed under another regulatory law;
 - (d) whether the other regulatory law under which the entity is licensed or registered provides sufficient supervision and oversight of the activity; and
 - (e) the requirement for licensing or registration under this Act.
- (4) An application under this section is not required where the supervised person is carrying on virtual asset activities that involve virtual service tokens only.
- (5) In making a determination regarding an application under this section, the Authority may —
 - (a) grant or deny the licence or registration as requested;
 - (b) grant or deny the waiver as requested; or
 - (c) direct the supervised person to apply for a licence or registration under one of the other regulatory laws.
- (6) A supervised person shall comply with any relevant provisions of this Act as the Authority may require.
- (7) A supervised person who fails to make an application under this section while carrying on virtual asset service commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars.”.

Amendment of section 16 - waiver

15. The principal Act is amended in section 16 as follows —



- (a) by deleting the words “an existing licensee” wherever they appear and substituting the words “a supervised person”;
- (b) by deleting the words “the existing licensee” wherever they appear and substituting the word “the supervised person”; and
- (c) by deleting the words “provided in the notice” and substituting the words “provided in the application”.

Amendment of section 19 - application for a sandbox licence

16. The principal Act is amended in section 19 as follows —

- (a) in subsection (1)(b)(ii), by deleting the words “existing licensees” and substituting the words “supervised persons”;
- (b) in subsection (4), by deleting the words “An existing licensee” and substituting the words “A supervised person”; and
- (c) in subsection (8), by deleting the words “the matters set out in section 22” and substituting the words “the fintech service and its probable effects on financial services business”.

Repeal of Part 4 - decisions to licence, register, approve issuances

17. The principal Act is amended by repealing Part 4.

Amendment of section 24 - powers and duties of the Authority

18. The principal Act is amended in section 24 as follows —

- (a) by inserting after subsection (2) the following subsections —
 - “(2A) In the performance of its functions under this Act, the Authority may, at all reasonable times, require a person whom the Authority reasonably believes is carrying on virtual asset service in contravention of the Act to provide —
 - (a) access to, and to allow copies to be made of, any books, records and documents;
 - (b) access to any cash, virtual assets and securities; and
 - (c) information or explanation,as the Authority may reasonably require for the performance of its functions under this Act.
 - (2B) For the purpose of performing its duties under subsection (1)(b), the Authority may, at the expense of the virtual asset service provider, authorise in writing a person with the requisite technical expertise to examine the affairs or business of a licensee, registered person or other person carrying on virtual asset services and to report to the Authority the results of the examination.



(2C) The Authority, in the performance of its functions, is entitled to access at reasonable times the necessary books and records and to request any information or thing from any person as may be reasonably required to enable the Authority to perform its functions.”; and

(b) by repealing subsection (4).

Amendment of section 25 - enforcement powers of the Authority

19. The principal Act is amended in section 25 as follows —

(a) in subsection (3) as follows —

- (i) in paragraph (b) by deleting the words “upon the licence” and substituting the words “on the licence or registration”;
- (ii) in paragraphs (j) and (k), by deleting the words “expense of the licensee” wherever they appear and substituting the words “expense of the licensee or registered person”;

(b) in subsection (6), by repealing paragraph (d) and substituting the following paragraph —

“(d) revoke the licence or cancel the registration and apply to the court for an order that the virtual asset service provider, if the virtual asset service provider is a company, be wound up by the court and, in the event of the winding up, the provisions of the *Companies Act (2023 Revision)* relating to the winding up of a company shall apply.”.

Amendment of section 26 - direction to cease and desist

20. The principal Act is amended in section 26 as follows —

(a) in subsection (1) as follows —

- (i) in paragraph (a), by deleting the words “service provider; or” and substituting the words “service provider.”;
- (ii) in paragraph (b), by deleting the words “service provider,” and substituting the words “service provider; or”; and
- (iii) by inserting after paragraph (b) the following paragraph —

“(c) registered and does not hold a licence but is publicly stating, implying or conveying that it is licensed in accordance with this Act.”;

(b) by inserting after subsection (1) the following subsection —

“(1A) Where the Authority is of the opinion that a natural person is providing virtual asset service in contravention of section 4(2), the Authority shall direct the natural person, in relation to the virtual

asset service, to cease or desist from carrying out the act or pursuing the course of conduct.”;

- (c) in subsection (2), by deleting the words “by the Authority under subsection (1)” and substituting the words “by the Authority under subsection (1) or (1A)”; and
- (d) by repealing subsection (3).

Amendment of section 27 - revocation of licence

21. The principal Act is amended in section 27 as follows —

- (a) by deleting the section heading and substituting the following section heading —
“Revocation of licence or cancellation of registration”; and
- (b) in subsection (1) as follows —
 - (i) by deleting the words “or a sandbox licence” and substituting the words “, revoke a sandbox licence, cancel a registration or cancel the approval for a virtual asset issuance”;
 - (ii) by deleting the words “the licensee” wherever they appear and substituting the words “the virtual asset service provider”; and
 - (iii) in paragraph (b), by deleting the words “by the licence” and substituting the words “by the licence or the conditions of its registration”.

Amendment of section 28 - shares not to be issued or transferred without the prior approval of the Authority

22. The principal Act is amended in section 28(4) as follows —

- (a) by deleting the words “a legal person” and substituting the words “a company or partnership”; and
- (b) by deleting the words “the legal person or legal arrangement” and substituting the words “the company or partnership”.

Amendment of section 30 - appeals against decisions made by the Authority

23. The principal Act is amended in section 30(1) by repealing paragraph (f) and substituting the following paragraph —

- “(f) for refusal of a waiver under section 16 for a supervised person to engage in virtual asset service.”.

Amendment of section 31 - audit of accounts

24. The principal Act is amended in section 31 as follows —

- (a) by repealing subsections (1) and (2) and substituting the following subsections —



- “(1) Every licensee shall have its accounts audited annually or at such other times as the Authority may require by an auditor who shall be a chartered accountant, certified public accountant or other professionally qualified accountant approved by the Authority.
- (2) The audited accounts shall be forwarded to the Authority within six months after the end of the financial year of the licensee unless prior written approval for an extension has been granted by the Authority.
- (2A) A licensee shall forward to the Authority consolidated accounts in respect of the parent undertaking of the group of which the licensee is a member within three months after the end of the financial year of the parent undertaking of the group unless prior written approval for an extension has been granted by the Authority.”;
- (b) in subsection (3), by deleting the words “comply with subsection (2)” and substituting the words “comply with subsection (2) or (2A)”;
- (c) by repealing subsection (4); and
- (d) by repealing subsection (6) and substituting the following subsections —
 - “(6) If it appears to the Authority that an auditor has failed to comply with the requirements in section 32(1), the Authority may disqualify the auditor from being an auditor of a licensee.
 - (6A) The Authority may remove any disqualification imposed under subsection (6) if it is satisfied that the person in question will in future comply with the requirements in section 32(1).”.

Amendment of section 32 - duty of auditor

25. The principal Act is amended in section 32 as follows —

- (a) in subsection (1) as follows —
 - (i) in paragraph (c), by deleting the words “or creditors; or” and substituting the words “or creditors;”
 - (ii) in paragraph (d), by deleting the words “produce a report,” and substitute the words “produce a report; or”;
 - (iii) by inserting after paragraph (d), the following paragraph —
 - “(e) is carrying on or attempting to carry on business in a fraudulent or criminal manner;”, and
 - (iv) by deleting the words “the auditor shall” and substituting the words “the auditor shall, subject to subsection (1A),”;
- (b) by inserting after subsection (1) the following subsection —
 - “(1A) Written notice under subsection (1) shall only be given to the licensee if the notice does not impede the obligations of the auditor.”;
 and

(c) by inserting after subsection (5) the following subsection —

“(6) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.”.

Repeal and substitution of section 33 - entry and search of premises

26. The principal Act is amended by repealing section 33 and substituting the following section —

“Entry and search of premises

33. (1) If a magistrate is satisfied by information on oath, given by the Authority or by a person authorised under section 24(2B) to assist the Authority, that either—

- (a) there is reasonable ground for suspecting that an offence against this Act, the *Proceeds of Crime Act (2020 Revision)*, the *Anti-Money Laundering Regulations (2023 Revision)*, or the *Beneficial Ownership Transparency Act, 2023*, has been or is being committed and that evidence of the commission of the offence is to be found at any premises, or in any electronic device, platform or computer specified in the information; or
- (b) books, records, vouchers, documents, cash, virtual assets or securities which ought to have been produced under section 24(2A) and have not been produced are to be found at any premises or in any electronic device, platform or computer specified in the information,

the magistrate may authorise the Authority, a person authorised under section 24(2B) or any constable of the rank of Inspector or above, together with any other person named in the warrant and any other constables, to enter the premises specified in the information in which the electronic device or platform or computer so specified may be, at any time within one month from the date of the warrant, and to search the premises, electronic device, platform or computer.

(2) The person authorised by the warrant under subsection (1) to conduct a search may —

- (a) search every person who is found in, or whom that person has reasonable grounds to believe to have recently entered or is about to enter, the premises or had access to the electronic device, or platform or computer; and
- (b) may seize any books, records, vouchers, documents, cash, virtual assets or securities—
 - (i) in the possession of any person referred to in paragraph (a);



- (ii) in the premises specified in the information; or
 - (iii) stored on an electronic device, platform or computer, which the person authorised by the warrant has reasonable grounds for believing ought to have been produced under section 24(2A).
- (3) Where under this section a person has any power to enter any premises that person may use such force as is reasonably necessary for the purpose of exercising that power.
- (4) A person who obstructs the Authority or any other person in the exercise of any powers conferred on it or that person under this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for one year, or to both.
- (5) For the purposes of this section, “**premises**” includes any vehicle, vessel or aircraft.”.

Amendment of section 46 - regulations

27. The principal Act is amended in section 46 by deleting the words “financial service business” wherever it appears and substituting the words “financial services business”.

Passed by the Parliament the day of , 2024.

Speaker

Clerk of the Parliament