

## **Mauritius: An overview of the new regulatory framework of virtual assets and initial token offerings**

At the end of 2021, Parliament passed the Virtual Asset and Initial Token Offering Services Act 2021 (**Act**) which came into force by proclamation on 7 February 2022. The Act was prepared in line with international standards to strengthen the development of key sectors and encourage innovation in fintech and regtech. The Act provides a comprehensive legislative framework for virtual asset service providers (**VASPs**) and issuers of initial token offerings (**ITOs**). The Act, in compliance with the Financial Action Task Force's standards, includes provisions to mitigate the risk of money laundering, financing of terrorism and the proliferation of such related risks. This article highlights the key aspects of the Act.

**Definitions:** The Act defines a 'VASP' as a person who, as a business, conducts one or more of the following activities or operations for, or on behalf of, another person:

- exchange between virtual assets and fiat currencies;
- exchange between one or more forms of virtual assets;
- transfer of virtual assets;
- safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; or
- participation in, and provision of, financial services related to an issuer's offer and/or sale of a virtual asset.

'Virtual asset' is defined as 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 digital representations of fiat currencies, securities and other financial assets that are already covered in the Securities Act 2005.

'Virtual token' is defined as any cryptographically secured digital representation of a set of rights, including smart contracts, provided on a digital platform and issued or to be issued by an issuer of initial token offerings.

It is also interesting to note that the Act provides for an 'inconsistency rule', whereby the Act will prevail over any inconsistency between matters falling under the Act and any other applicable laws.

**The regulatory and supervisory function of the Financial Services Commission of Mauritius (FSC):** The FSC is responsible for regulating and supervising VASPs and issuers of ITOs. The FSC will monitor and oversee their business activities. The FSC may also issue guidance on the detection of suspicious transactions and the application of anti-money laundering and the financing of terrorism measures.

### **VASP licence**

The Act introduces 5 classes of licence: (i) **Class 'M'** Virtual Asset Broker-Dealer (ii) **Class 'O'** Virtual Asset Wallet Services (iii) **Class 'R'** Virtual Asset Custodian (iv) **Class 'I'** Virtual Asset Advisory Services (v) **Class 'S'** Virtual Asset Market Place

**Class of licence:** Any VASP that conducts one or more of the prescribed business activities (set out above), will need to apply for the corresponding class of licence. However, an applicant may be issued with a different class of licence than that applied for, as determined by the FSC.

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**Physical office:** A VASP is required to have a physical office in Mauritius and the business activities of a VASP must be directed and managed from Mauritius

**'Fit and proper' criteria:** A VASP is required to ensure that each of its controllers, beneficial owners, associates and officers satisfy the 'fit and proper' criteria of the FSC.

**Approval of the FSC on change in shareholding:** The prior approval of the FSC is required for an issue or transfer of shares or legal or beneficial interest in a VASP.

**Ongoing responsibilities and obligations of VASPs:** To meet its various obligations, a VASP must, *inter alia*, ensure that a sufficient amount of each type of virtual asset is maintained and adequate systems and controls must be implemented at all times to prevent market abuse. VASPs are also required to maintain a minimum stated unimpaired capital and keep their accounts in respect of virtual assets of clients that they hold, separate from accounts kept in respect of any other business.

### **Issuers of ITO**

**Application:** Issuers of ITOs must be registered with the FSC if they carry on business in or from Mauritius.

**Ongoing responsibilities and obligations of issuers of ITOs:** Issuers of ITOs are required to disclose full and accurate information including, *inter alia*, matters specified in the Act and classes of virtual tokens, in their white papers to allow potential purchasers to make informed decisions.

### **What next?**

It is now mandatory for those already carrying out the business activities of a VASP or an issuer of ITOs, to be duly licensed or registered within three months from the commencement of the Act. A longer timeframe of 18 months is applicable to those already carrying out the business activities of a custodian (digital assets) (as licensed by the FSC), to register for a VASP licence or an issuer of ITOs.