

# International Proximity



## Mauritius: The FinTech Hub for the Africa-Asia nexus

### Legislative progress toward a FinTech Hub

Mauritius is positioning itself as the 'go to' hub for fintech and digital business in the Africa-Asia region. To facilitate this goal, enabling legislative provisions have been put in place:

- On 17 September 2018, via a guidance note, the Financial Services Commission (FSC) recognised digital assets as an asset-class for investment by sophisticated and expert investors.
- In early 2019, the FSC published the *Financial Services (Custodian services (digital asset)) Rules 2019* (CDA Rules 2019) to regulate the safekeeping of digital assets.
- The FSC provided further clarification on its regulatory approach to security token offerings in a second guidance note.
- In 2020, the FSC issued a third guidance note setting out a common set of standards for Security Token Offerings and providing for the licensing of Security Token Trading Systems.
- In February 2021 the FSC issued a consultation paper on the introduction of a regulatory landscape for a Fintech Service Provider (FSP) licence to establish a supervisory regime for providers of technology services looking to establish a commercial presence and operate in or from Mauritius.

The scope of these provisions was limited to custodian services and to digital assets such as 'securities' and 'security tokens'.

### The Virtual Asset and Initial Token Offering Services Act 2021

The final stage of this legislative journey has been the coming into force on 07 February 2022 of the *Virtual Asset and Initial Token Offering Services Act 2021* (VA Act). The VA Act provides a comprehensive legislative framework for virtual asset service providers (VASPs) and issuers of initial token offerings (ITOs) which goes beyond the more limited scope of the preceding provisions to cover a much wider range of activities. The VA Act was drafted with international standards in mind to strengthen the development of key sectors and encourage innovation in fintech and regtech.

The VA Act contains important provisions to mitigate the risk of money laundering, financing of terrorism, and the proliferation of such risks where fast evolving technologies are involved. Specifically, the new definition of a 'virtual asset' was imported from the FATF guidelines. The inclusion of these provisions is in line with Mauritius' longstanding commitment to combat money laundering and

terrorism financing and ensures that Mauritius is in compliance with the FATF's standards, the only country in the world to now comply with all 40 of FATF's recommendations.

### The key aspects of the VA Act are as follows:

The VA 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 VA Act 2005.

'Virtual asset exchange' (VAE) is defined as a virtual platform that facilitates the exchange of virtual assets for fiat currency or other virtual assets on behalf of third parties for a fee or other benefit; and that either holds custody, or controls virtual assets, on behalf of its clients to facilitate an exchange; or purchases virtual assets from a seller when transactions or bids and offers are matched in order to sell them to a buyer. A VAE includes the owner/operator of the platform but excludes a platform that provides a forum where sellers and buyers may post bids and offers, and a forum where the parties trade on separate platforms or in a peer-to-peer manner. The platform can be centralised or decentralised and can be found in Mauritius or in another jurisdiction.

'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.

### Application of the VA Act

| Applies to:  | Does not apply to:   |
|--|--|
| Any VASP and any issuer of ITOs, that carries out its business activities in or from Mauritius.  | Digital currencies issued by the Bank of Mauritius (BoM) or the central bank of a foreign jurisdiction.  |
| Banks (licensed by the BOM) carrying out any VASP activity, with the prior approval of the central bank.   | Digital representations of fiat currencies, securities and other financial assets.   |
| The holder of a licence issued under the National Payment Systems VA Act, through its subsidiary, in respect of activities a VASP (with the prior approval of the central bank).   | Closed-loop items which are non-transferable, non-exchangeable, and cannot be used for payment or investment purposes, and which a person cannot sell onward on a secondary market outside of the closed-loop system.  |
|  | A person who, by virtue of his/her acting in a professional capacity on behalf of persons engaged in the participation and provision of financial services related to a VASP and an issuer of ITOs, as prescribed in Financial Services Commission Rules.  |
| An issuer of ITOs as a company registered as such under the VA Act making initial token offerings/ITOs (i.e., making an offer for sale to the public of a virtual token in exchange for fiat currency or another virtual asset). | A person who provides ancillary services or products to a VASP, which include, <i>inter alia</i> , the supply of logistics and technical assistance services, the manufacture of hardware and engineering of software services, network and telecommunication services, information technology services in respect of the creation, encryption and digital transfer of virtual assets, services to hardware wallet manufacturers or non-custodial wallets and services provided by a bank under the Banking VA Act 2004. |

The VA Act provides that it will prevail where there is any inconsistency between matters falling under the VA Act and any other applicable laws.

## The regulatory and supervisory function of the 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 combatting the financing of terrorism measures. The other regulatory and supervisory functions and powers of the FSC include:

- Promoting investor education that facilitates innovation;
- Collaborating with the BoM to ensure the financial soundness and stability of the financial system in Mauritius;
- Carrying out onsite inspections to ascertain whether VASPs and issuers of ITOs are complying with the VA Act and the conditions of their licences/registrations; and
- Exchanging information with other supervisory bodies and law enforcement agencies.

## VASPs and issuers of ITOs

VASPs and issuers of ITOs are required to maintain a high standard of professional conduct and confidentiality and carry out their business activities with honesty and due diligence in addition to maintaining adequate financial resources and solvency.

The VA Act introduces five classes of licence, the letters of which spell the Creole name for Mauritius: “Moris”. The specific activities associated with each class of licence are as follows:

| Business activities   | Class of licence                          |
|---|---|
| Exchange between virtual assets and fiat currencies<br>Exchange between one or more forms of virtual assets   | Class ‘M’ Virtual Asset Broker-Dealer     |
| Transfer of virtual assets  | Class ‘O’ Virtual Asset Wallet Services   |
| Safekeeping of virtual assets or instruments enabling control over virtual assets<br>Administration of virtual assets or instruments enabling control over virtual assets | Class ‘R’ Virtual Asset Custodian         |
| Participation in and provision of financial services related to an issuer’s offer and/or sale of virtual assets   | Class ‘I’ Virtual Asset Advisory Services |
| Virtual Asset Exchange (VAE)  | Class ‘S’ Virtual Asset Advisory Services |

## VASP licence

### Application:

An application for a VASP licence can only be effected by a company and must be addressed to the FSC under section 8 of the VA Act. However, where a bank has obtained the written approval of the BoM, it can apply for a class ‘R’ or ‘I’ licence and can also, through its subsidiary, apply for a class ‘M’, ‘O’ or ‘S’ licence. A licensee under the National Payment Systems VA Act 2018 may also, subject to obtaining the written approval of the BoM, apply through its subsidiary, for a licence to carry out the business activities of a VASP.

### 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.

### 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. In determining compliance by a VASP with this requirement, the FSC will normally consider (a) the location of board meetings, (b) where management meeting to effect policy decisions takes place, (c) where strategy, risk management and operational decision-making occurs; and whether the executives responsible for such decision making are located in Mauritius. The FSC may also consider the place of residence of officers, employees or directors of a VASP.

A foreign entity looking to provide virtual asset services in Mauritius, will need to incorporate a company in Mauritius. Where a foreign entity is seeking to be licensed in Mauritius but aims to conduct its business activities of virtual asset services principally outside Mauritius, it will need to set up a company in Mauritius and apply for a global business licence.

### Variation of licence and scope of business:

An application for a variation of licence or to remove any limitation imposed may be made to the FSC. However, a VASP cannot modify the scope of its business activities, merge with another entity or reorganise its legal structure, change its name or external auditor, without the prior written approval of the FSC.

**'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. An officer (including a senior executive) of a VASP can only be appointed with the prior approval of the FSC and any termination of appointment of an officer is to be notified to the FSC. Any failure to comply with these requirements is an offence by the VASP which will, on conviction, be liable to a fine not exceeding MUR 1 000 000 and to imprisonment for a term not exceeding five years.

**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. Any such issue made without obtaining the prior approval of the FSC is of no effect. The FSC is to be notified in writing of a transfer of shares or legal or beneficial interest of less than 5% in a VASP. However, the prior approval of the FSC as opposed to a mere notification will still be required where such transfer results in a person who holds more than 20% of the shares or legal or beneficial interest and/or a change in control in the VASP.

**Ongoing responsibilities and obligations of VASPs:**

To meet its obligations to clients, a VASP that has custody of one or more virtual assets for one or more clients, must ensure that a sufficient amount of each type of virtual asset is maintained. As a measure to prevent market abuse, the VASP must ensure that adequate and appropriate systems and controls are implemented at all times.

A VASP that holds a class 'S' licence must ensure that the systems and controls in respect of its virtual asset exchange, cover the (a) identification and detection of suspicious price spikes or anomalies, (b) prevention and monitoring of abusive trading strategies, and (c) immediate steps for the restriction or suspension of trading upon discovery of market manipulative or abusive trading activities, including temporarily freezing of accounts. As soon as the VASP holding the licence becomes aware of the occurrence of any market manipulative or abusive trading activities on its virtual asset exchange, it has an obligation to notify the FSC, implement appropriate remedial measures and provide the FSC with such additional assistance as the FSC requires.

**Financial obligations of VASPs:**

VASPs are 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. VASPs are required to file audited financial statements in respect of all transactions and balances relating to its business activities with the FSC every year.

## Issuers of ITOs

**Application:**

Issuers of ITOs must be registered with the FSC if they carry on business in or from Mauritius. An application for registration is made to the FSC under section 24 of the VA Act. The VA Act stipulates that no person, other than a company, shall carry out the business activities of an issuer of ITOs. An application for registration can be made by issuers of ITOs through a virtual exchange in Mauritius or its equivalent acceptable to the FSC, at least 45 days before the start of the offer period. Such application is processed within 30 days after the FSC is provided with all such information, documents, and reports as it may require. Where the FSC considers an application and assesses a virtual token as being a security, the application for registration of the token may be withdrawn by the applicant who may thereafter proceed to have the token registered in accordance with the Securities VA Act.

**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 VA Act and classes of virtual tokens, in their white papers to allow potential purchasers to make informed decisions. To ensure full transparency, there is also a requirement for white papers to be signed by every member of the issuer of ITOs and published on the ITO's website. Disclosure of any information that could affect the interests of purchasers must be made by issuers of ITOs by notifying the FSC in writing and disclosing such information by way of a supplement to the white paper. Prior written approval of the FSC is required in respect of any change of class of virtual tokens on offer. Any advertisement of ITOs should be clearly identifiable as an advertisement, accurate, consistent with the information contained in the white paper and should not be misleading. Purchasers have a right of action against issuers of ITOs for the rescission of the subscription or damages where the published white paper contains a material misrepresentation relating to any matters specified in the relevant schedule to the VA Act. A purchaser is also entitled to exercise his/her right of withdrawal by giving written notice to the issuer of ITOs not later than 72 hours after the date of the agreement to purchase the virtual token.

## Existing fintech providers

It is now mandatory for those already carrying out the business activities of a VASP or an issuer of ITOs under (i) a Regulatory Sandbox Licence issued under the Economic Development Board VA Act or (ii) a licence, a registration or any authorisation issued or granted



under the Financial Services VA Act 2007, or otherwise, to be duly licensed or registered within three months from the commencement of the VA 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.

## Mauritius: Regional FinTech Hub

The introduction of this comprehensive legislative framework for virtual assets fits in strategically with Mauritius' position as the leading IFC for the region and the domicile of choice for investment across the rapidly growing Africa-Asia nexus. The 2022 Mauritian Budget has announced the following:

- The Bank of Mauritius and the FSC will set up open labs for banking and payment solution.
- A FinTech Innovation Hub will be created to foster entrepreneurship culture and a single desk will be set up to accept all FinTech-related applications.
- A new Securities Bill will reinforce the legal structure of the FinTech sector, particularly with regard to tokens and virtual assets with underlying securities.
- New legislation for virtual assets will be enacted.
- The Bank of Mauritius will roll out, on a pilot basis, a central bank digital currency to be known as the Digital Rupee.



The Mauritian government is committed to providing new ways to access financial services and the VA Act will enable Mauritius to develop as a 'go to' FinTech Hub.

## Mauritius Fin Tech Hub: Accessing the Mauritius advantage

Suzanne Gujadhur Bell

[SGujadhur@internationalproximity.com](mailto:SGujadhur@internationalproximity.com)

Ashish Jagarnath

[AJagarnath@internationalproximity.com](mailto:AJagarnath@internationalproximity.com)

Business Development

[Businessdevelopment@internationalproximity.com](mailto:Businessdevelopment@internationalproximity.com)

Tel: +230 401 2302

Tel: +230 401 2310

Tel: +230 401 2300

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