

## **PART 1 OF A SERIES ON THE RULES ISSUED UNDER THE VIRTUAL ASSET AND INITIAL TOKEN OFFERING SERVICES ACT 2021**

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Following the coming into force of the Virtual Asset and Initial Token Offering Services Act 2021 (the **VAITOS Act**) on 7 February 2022, the Financial Services Commission (**FSC**) has, by way of a communiqué issued on 15 July 2022, announced the coming into effect of the rules issued under the VAITOS Act. The FSC has published the rules which apply to all virtual asset service providers (**VASPs**) that carry out business in or from Mauritius as well as all VASPs which sell relevant products / services in Mauritius. Draft of such rules were initially issued by the FSC for public consultation. The highly anticipated rules (the **Rules**) which have now come into effect on 01 July 2022 cover minimum capital and other financial requirements, client disclosure requirements, custody of client assets, cybersecurity, publication of advertisements, risk management and statutory returns.

In this Part 1, we will address three of the seven Rules:

- The Virtual Asset and Initial Token Offerings Services (Statutory Returns) Rules 2022
- The Virtual Asset and Initial Token Offerings Services (Capital and Other Financial Requirements) Rules 2022
- The Virtual Asset and Initial Token Offerings Services (Publication of Advertisements) Rules 2022.

### **The Virtual Asset and Initial Token Offerings Services (Statutory Returns) Rules 2022**

These rules require a VASP to act in an open and cooperative way with a duty of disclosing any such matter in respect of which the FSC needs to be notified, including, *inter alia*, matters regarding:

- (i) any breach or potential breach of the VAITOS Act or the FSC rules and any licensing condition;
- (ii) any changes to a VASP's license or registration held in any jurisdiction;
- (iii) any actual, suspected or likely failure to ensure confidentiality and reliability of client's information;
- (iv) any material changes to the VASP's business continuity plan; or
- (v) any material change to a VASP's outsourcing arrangements.

In terms of the annual reporting requirements, a VASP is required to submit within four months after its financial year end, to the FSC, information regarding, *inter alia*:

- (i) its clients (such as the number of clients on-boarded on a face-to-face basis or rejected or off boarded during the reporting period together with number clients where enhanced due diligence was applied or originating from high-risk jurisdictions and the number of suspicious transaction reports filed);
- (ii) compliance with the other rules including the results of the review of (a) its cybersecurity strategy and framework and operational resilience and (b) how it meets the general prudential requirement;
- (iii) its day-to-day operations, which would include:

- the number of its board meetings;
  - any changes to the staff supporting the MLRO;
  - an overview of any shareholder involvement in its operations, any outsourcing of its functions;
  - the number, if any, of private keys for virtual asset wallet services;
  - whether the VASP holds clients' virtual assets with a third party custodian; and
- (iv) IT (e.g. any unplanned downtime of IT systems) and market abuse related information (e.g. market abuse monitoring).

### **The Virtual Asset and Initial Token Offerings Services (Capital and Other Financial Requirements) Rules 2022**

Under these rules, a VASP must, at minimum, always maintain as unimpaired capital and liquidity resources, the greater of:

- (i) the own funding requirement;
- (ii) prudential requirement; or
- (iii) such other amount as may be imposed by the FSC.

Intangible assets, including goodwill, cannot be used as part of calculating capital and shall be deducted prior to determining whether there is sufficient capital.

A VASP needs to maintain its own funding requirements as follows:

<b>Virtual asset service provider</b>	<b>Amount</b>
Issuer of ITO	sufficient working capital to be capable of meeting its debts as they fall due.
Virtual Asset Advisory Services	sufficient working capital to be capable of meeting its debts as they fall due.
Virtual Asset Broker-Dealer	2,000,000 Mauritian Rupees or its equivalent in any other fiat currency.
Virtual Asset Wallet Services	sufficient working capital in fiat currency to continue business for a period of 12 months, based on realistic forecasts for the business in different market conditions (both negative and positive scenarios).
Virtual Asset Custodian	5,000,000 Mauritian Rupees or its equivalent in any other fiat currency
Virtual Asset Market Place	6,500,000 Mauritian Rupees or its equivalent in any other fiat currency

For multiple licences, the VASP shall have a combined capital requirement. Further, a VASP needs to have prudential safeguards equal to an amount of capital at least the higher of one quarter of its fixed overheads

over the preceding year and the financial resources requirements. The approval of the FSC is needed for a VASP to use unaudited interim profits in the calculation of capital.

The rules also set out requirements for calculating fixed overheads, and deductibles items.

A VASP must also maintain proper records of accounts and ensure its books, records and accounts comply with internationally recognised accounting standards as applicable.

Following a 30% (or more) increase of projected relevant expenditure or an increase of 100,000,000 Mauritian Rupees (or more) in a VASP's fixed overheads requirement, the VASP must forthwith recalculate its fixed overheads requirement in relation to the projected relevant expenditure, substitute the revised fixed overheads requirement that results from the calculation and recalculate its basic liquid assets requirement using the revised fixed overheads requirement.

On the other hand, following a decrease of 30% or more in projected relevant expenditure or a decrease of 100,000,000 Mauritian Rupees (or more) in a VASP's fixed overheads requirement, the VASP may recalculate its fixed overheads requirement in relation to the projected relevant expenditure subject to the projected reduction in expenditure being a reasonable projection.

**The Virtual Asset and Initial Token Offerings Services (Publication of Advertisements) Rules 2022**

Applicability of these rules:

Apply to:	Are not applicable to:
<ul style="list-style-type: none"> <li>• any VASPs and issuer of initial token offerings carrying out business in or from Mauritius;</li> <li>• any VASPs and or issuer of initial token offerings which intend to advertise and market relevant products / services in or from Mauritius;</li> <li>• a business in Mauritius advertising and marketing relevant products/services outside of Mauritius.</li> </ul>	<ul style="list-style-type: none"> <li>• persons printing advertising and marketing materials for VASPs; and</li> <li>• persons responsible for securing the placement of an advertisement provided they are not responsible for the contents thereof.</li> </ul>

These rules require advertisements for relevant products/services to be conducted in a fair, timely and consistent manner without false, misleading or deceptive information. A VASP cannot discharge its responsibility in respect of the accuracy of advertisements.

These rules set out specific disclosure requirements in terms of:

- avoidance of extensive use of technical,
- legal terminology or complex language,
- excessive details in an advertisement,

which may not convey clear messages to the target audience.

Advertising conduct standards are applicable and third parties are duty bound to maintain a good standard when making an advertisement of a VASP.

There are also certain principles and standards which must be adhered to in connection with the approval of advertisements on the internet.

Additionally, a VASP must maintain every record keeping of its advertisements and filings and must ensure that:

- no unreasonable inducement or gifts are provided to the consumers;
- reasonable steps are taken to match electronic advertisements with up-to-date paper versions;
- no bad internet advertising and marketing practices are made; and
- no cold call is initiated with customers.

#### **Final Note**

The Rules have been long awaited by market players and not only serve to regulate how VASPs must manage their business but also provide distinct boundaries within which the VASPs are to carry their business. The FSC plays a prevalent role as the reporting and regulatory body of VASPs and will have the tedious task of monitoring the activities of the VASPs.

Given their novelty, the market is eagerly awaiting to see how the Rules are being implemented in practice and how strict or commercial will the FSC's approach be in enforcing those Rules.