

# BVI Virtual Asset (Service Providers) Act – a practical guide

The British Virgin Islands is at the cutting edge of global crypto and digital asset regulation with the BVI Virtual Asset (Service Providers) Act, 2022 (**VASP Act**), effective 1 February 2023. This means virtual asset service providers (**VASPs**) within the regime must become registered with the BVI Financial Services Commission (**BVIFSC**).

The regime comprises:

- The VASP Act itself
- BVIFSC Guidance to VASPs on the prevention of money laundering, terrorist financing and proliferation financing (**VASP AML Guidance Notes**)
- BVIFSC Guidance on application for registration of a VASP (**VASP Application Guidance**)

In this practical guide, we set out what you need to know if your BVI entity is a VASP, how to prepare for and make an application to become registered, documents and information required, and fees and timings.

## What is a VASP?

As the name suggests, VASPs are, in essence, BVI persons (including BVI business companies) that provide “virtual assets services” in respect of virtual assets.

The detailed definition of virtual asset services in the VASP Act matches the VASP definition found in the BVI Anti-money Laundering Regulations 2008 (**AML Regulations**), which was also updated to cater for the introduction of VASP regulation at the end of 2022.

Please refer to, [our article](#) on the AML Regulations under the heading “*What is a VASP?*” for more details.

## Are token issuers caught?

No. If all an entity does is issue its own tokens it will generally not fall within the definition of a VASP. However, providing services for other issuers (even within the same group) may constitute VASP activity in the BVI.

However, projects must consider:

- The impact of the BVI AML regime, which will be relevant and raise legal and practical issues arising from conducting a token issuance with or without KYC or controls at all.
- Interactions with potentially “prohibited” customers, such as persons on assets freeze lists under sanctions regimes, or those based in countries, such as Russia, whether significant limits have been placed on the provision of digital asset services by the UK family of jurisdictions, including the BVI.

## What about decentralised finance protocols, DAOs and exchanges?

Yes, these will be caught where they meet the definition of a VASP under the VASP Act. Exchanges will almost certainly be caught. Care should be taken in the BVIFSC registration criteria for these undertakings, and we outline key requirements in more detail below.

## Is my BVI entity a VASP?

Harneys has launched the [BVI VASP Initial Assessment](#) tool to offer you a preliminary indication as to whether your BVI entity and its operations may be conducting VASP activity.

- You can access the tool [here](#). Its use is free of charge.
- Alternatively, please contact [BVIVASPQueries@harneys.com](mailto:BVIVASPQueries@harneys.com) to engage Harneys' expert team of VASP advisors for a formal review and, where necessary, the issuance of a legal opinion relevant to your case.

## I'm caught, now what?

In short, you need to register your business with the BVIFSC if you want to continue the VASP business in the BVI.

The VASP Act provides for a transitional (or grandfathering) regime whereby VASPs operating prior to the coming into force of the regime, ie prior to 1 February 2023, may continue to operate **provided** they submit an application for VASP registration with the BVIFSC or cease regulated activities in or from within the BVI. This transitional period ends on 31 July 2023.

Once a VASP submits an application to the BVIFSC, the transitional period is extended to cover the time period that the BVIFSC considers and either approves or rejects the application.

In consequence, the new regime should not interrupt the on-going business activities of a pre-existing VASP that engages appropriately with the BVIFSC.

## VASP requirements – before submitting an application

VASPs, essentially being BVIFSC applicants, must submit the following documents you would expect of licensees as part of the application:

- **Governance:** the VASP Act requires a VASP to have at least two (2) individual directors. The FSC may at any time require the appointment of a local director, though this is not a mandatory requirement.
- **Ownership structure:** the FSC requires full evidence information on the ultimate beneficial ownership of the applicant, including detail on structures and intermediates. Overly complex structures may lead to delays in the application process or application refusal if the structure obscures the applicant's ownership and control.
  - **A note on DAOs:** This requirement, together with notification arrangements on changes in control (see below) means that applications by DAOs, ie through foundation companies, are unlikely to be accepted because UBOs cannot be identified.
- **Business plan:** VASPs that are existing businesses prior to the VASP Act taking effect must provide details of their current activities within their business plan. Newly-formed entities applying for a VASP registration must also prepare a detailed business plan. The details provided should be sufficient for the FSC to be informed about the size of such business. The business plan needs to cover the extensive requirements set out in the Regulatory Code 2009, but must also consider the following:
  - **Corporate governance:** ensuring sufficient and strong corporate governance mechanisms are in place to protect the applicant as well as its clients and customers.
  - **Capital and reserves:** an adequate level of paid-up capitalisation for the nature of their operations, taking into account the nature, size and complexity of the VASP and its operations.
  - **Technological audits:** methods for independent assurances of the VASP's technological infrastructure by a systems auditor with sufficient expertise.
  - **Liquidity:** providing for adequate liquidity reserves that allow for uninterrupted operations. This takes the form of a comprehensive funding and contingency funding plan which evidences how such liquidity will be achieved in normal operations and in times of market stress.
  - **Risk management strategies:** the positions for managing all risk including legal, operational, concentration and compliance risks.
  - **Consumer protection provisions:** disclosures to clients and other communications, including marketing efforts, will be fair, accurate, suitable/appropriate for clients, not misleading and clear. There must also be a clear and user-friendly complaints handling code addressing compliants handling.

- **Related parties and public disclosures:** policies and procedures regarding the engagement and ongoing management of related parties' transactions and other third parties.
  - **Custody and safeguarding:** all safekeeping arrangements for client virtual assets and fiat, segregation from the applicant's assets and identifying and valuing client assets.
  - **Escrow and lock-up provisions:** where applicable for tokens held or issued by the applicant or a related party.
  - **Interoperability:** whether the applicant intends to allow for interoperability with other VASPs, or where it intends to limit engagement with other VASPs.
  - **Cessation of business and living wills:** the mechanisms and processes that occur if the applicant needs to cease business, whether in an orderly fashion or otherwise.
  - **Implementation of the travel rule:** how the applicant will comply.
- **Policies and procedures:** VASPs must prepare and a number of policies and procedures documents with the application. Whilst no case is exactly the same, an indicative list would comprise the following:
    - **Risk Assessment Framework:** sufficiently addressing all risks associated with the business to be conducted or services to be provided, including risk rating and monitoring of clients and transactions on an ongoing basis and in real time given the nature of VASP activities.
    - **Manual of Compliance Procedures and Internal Controls:** this must focus on the money laundering and other risks, taking into account the VASP AML Guidance, as well as the risks of the VASP operations being used for illicit activity and other controls outlined in the Regulatory Code.
    - **Outsourcing Agreements:** agreements must be provided where applicable.
    - **Data Protection and Cybersecurity Framework:** the framework for guarding against data breaches and cybersecurity threats.
    - **Statement of Technological Infrastructures:** this is effectively a description of the tech stack, and must set out details of software, reliance on open-source codes, development of bespoke systems and other relevant details.
    - **Business Continuity Plan:** this must comply with the requirements of the Regulatory Code.
    - **Custody and Safekeeping of Assets Framework:** see above under "custody and safeguarding"
    - **Complaints Handling Procedures**
    - **Technology Audits Framework (if applicable)**
  - **Insurance requirements:** The FSC may require the VASP to obtain professional indemnity insurance or similar arrangement as may be determined (ie surety bond or trust account) as a prerequisite to the grant of a registration application. We are working with reputable insurers in this space with further information to be published soon.

## Application process

All VASP applications must be submitted to the FSC through a BVI based authorised representative registered with the BVIFSC as such under the VASP Act. The authorised representative must have sufficient knowledge and skills in VASP activities.

This may mean that your existing authorised representative is not able to submit VASP applications, as this is a different registration process to those under other BVI regulatory regimes.

If you do not submit your VASP application through Harneys, you should check that your service provider is registered as an authorised representative under the VASP Act.

The application requires that you specify details of the applicant's legal advisors as well.

### Application fees

The Application Guidance sets out the following application fee schedule:

- VASP Applicant seeking to provide Virtual Assets Custody Service: US\$10,000
- VASP Applicant seeking to operate Virtual Assets Exchange: US\$10,000
- All other VASP Applications: US\$5,000

The fee must be submitted with the application. The application will not be processed without the fee.

## Application timings

The BVIFSC has committed in the VASP Application Guidance to providing **initial comments** on a submitted application **within six (6) weeks** of submission, and will **conclude the application process within six (6) months of submission**.

Timelines for review and approvals are dependent on quality of the application and information submitted within and in response to any subsequent request from the BVIFSC. In other words, a complete and accurate application with all required information is more likely to be processed quickly than an application with missing information, which may risk delays while the FSC asks for missing information or raises additional queries.

## Continuing obligations

The BVIFSC states in the VASP Application Guidance that, following registration, VASPs are required to ensure that they comply with their continuing obligations under the regime. This means, at all times:

- remaining “**fit and proper**”, ie fulfilling the FSC’s assessment that licensees are competent and that they conduct their businesses with integrity.
- **screening employees** and assessing the competence and probity of employees at the time of recruitment, and intermittently thereafter.
- maintaining **adequate human and technological resources**, and appropriate policies, procedures and mechanisms, to ensure compliance;
- considering and adapting resources and policies and procedures for any **changes in scope of business**, identified risks and changes in legislation
- obtaining prior approval of the FSC for **changes in a “significant interest” or a “controlling interest”**, which is generally an interest of 10 percent or more in the VASP.
- notifying the FSC of **specific events** including changes which may impact the FSC’s registration decision.
- complying with its obligations under the wider regulatory regime in the BVI, as relevant.

## Next steps

The BVI VASP Act and registration regime significantly changes the position of the BVI relating to virtual asset providers. Expert legal counsel is required to analyse whether your current or proposed BVI entity and its activities will be a VASP and required to register with the FSC, and to help you prepare an application for submission.

As a reminder, only those BVI authorised representatives expressly registered under the VASP Act may submit applications to the BVIFSC.

For more information, please do get in touch with your usual Harneys contact or email [BVIVASPQueries@harneys.com](mailto:BVIVASPQueries@harneys.com) for further assistance.

---

© Harneys, February 2023

Harneys is a leading international offshore law firm. From locations around the globe, Harneys advises the world’s top law firms, financial institutions and corporations on the laws of British Virgin Islands, Cayman Islands, Cyprus, Luxembourg, Bermuda, Anguilla, and Jersey. Jersey legal services are provided through a referral arrangement with Harneys (Jersey) which is an independently owned and controlled Jersey law firm. For more information about Harneys please visit [harneys.com](https://www.harneys.com) or contact us at [marketing@harneys.com](mailto:marketing@harneys.com).

The foregoing is for general information only and not intended to be relied upon for legal advice in any specific or individual situation.



For more information and key contacts  
please visit [harneys.com](https://www.harneys.com)