

REGULATORY INTELLIGENCE

COUNTRY UPDATE-Cayman Islands: Crypto-asset regulation

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Few areas of finance are developing faster than crypto-assets, a category that includes cryptocurrencies, securities tokens and utility tokens, whose common feature is use of distributed ledger technology (DLT). Today there are more than 16,000 individual cryptocurrencies in circulation and daily trading volumes are estimated to be more than \$275 billion on more than 400 platforms.

Their rise has led to calls for better regulation due to potential investor protection, money laundering and market integrity risks.

This article provides an overview of crypto-asset regulation in the Cayman Islands by [Ian Mason](#) of [Walkers \(Cayman\) LLP](#).

Crypto-asset regulation in the Cayman Islands**1. Which body regulates crypto-assets and related services?**

The Cayman Islands Monetary Authority (CIMA) is responsible for the regulation of crypto-assets, which broadly equate to "virtual assets" under Cayman Islands law. There is a licensing regime and a registration regime, for any person offering a "virtual asset service" in the course of business using a Cayman islands entity or otherwise from within the Cayman Islands. These are known as virtual asset service providers (VASPs).

2. Does any law regulate crypto-assets or crypto-asset service providers such as exchanges?

The Cayman Islands has introduced a coherent and relatively bespoke virtual asset regime. It is based on, and aligned with, global standards, set out by the Financial Action Task Force (FATF). The Virtual Asset (Service Providers) Act (Revised) (the VASP Act) is being implemented in phases. The first phase came into effect on October 31, 2020, and focuses on anti-money laundering (AML) and the counter-financing of terrorism (CFT) compliance, supervision and enforcement.

The second phase of the legislation, which will bring into force the licensing and virtual asset issuance approval process, is expected to commence at some time in 2023.

3. Has a national law or regulation defined "crypto-asset" and/or "cryptocurrency"?

The concept of "virtual asset" is key to determining if a person is offering a virtual asset service, and is therefore a VASP. # Under the VASP Act, a 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. # However, a digital representation of a fiat currency (essentially, legal tender) is excluded. # Similarly, "virtual service tokens" (being digital representations of value that are not transferable or exchangeable with third parties, such as digital tokens that only provide access to an application or service or that provide a service or function directly to their owner) are not treated as virtual assets.

4. What money laundering regulations, including any due diligence requirements, apply to crypto-assets?

The Cayman Islands Proceeds of Crime Act requires that entities that conduct "relevant financial business", which includes providing virtual asset services, must comply with the AML Regulations.

Persons registered or licensed under the VASP Act will be subject to ongoing AML requirements. These include:

- undertaking audits of their AML systems and procedures at the request of CIMA;
- obtaining prior approval from CIMA to appoint senior officers or AML compliance officers;



- providing certain notices to CIMA confirming their compliance with the AML Regulations and data protection laws and ensuring that all communications relating to the virtual asset service are accurate;
- designating an employee as the officer with responsibility for the procedures for combating money laundering, terrorist financing and proliferation financing.

5. What rules apply to the promotion of crypto-assets?

The VASP Act regulates the issuance of virtual assets.

A "virtual asset service" means the issuance of virtual assets or the business of providing one or more of the following services or operations for or on behalf of another person:

- exchange between virtual assets and fiat currencies;
- exchange between one or more other forms of convertible virtual assets;
- transfer of virtual assets;
- virtual asset custody service; or
- participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset.

The sale of newly created virtual assets to the public, in exchange for some form of consideration, is also included in the definition of virtual asset service.# This means that although certain kinds of non-public issuances (such as employee or intra-group issuances or private sales) should not be regulated, a person will need to be registered if they issue virtual assets to the public using a Cayman Islands vehicle.

The effect of this is that some, but not all, token issuers will be VASPs and will be required to register with CIMA.

As at January 2023, CIMA had registered 18 VASPs under the VASP Act, with further applications pending. CIMA has indicated that it intends to process applications under the VASP Act within 10 weeks of submission. That would be a rapid timetable, compared with the longer timelines of other national regulators for reviewing similar registration applications.

It should also be noted that the VASP Act introduces the concept of a virtual asset trading platform (VATP). This is defined as a centralised or decentralised digital platform that facilitates the exchange of virtual assets for fiat or other virtual assets on behalf of third parties for some form of reward and that (i) holds custody of or controls the virtual asset on behalf of its clients to facilitate an exchange; or (ii) purchases virtual assets from a seller when transactions or bids and offers are matched, in order to sell them to a buyer.

VATPs do not however include a platform that only provides a forum where sellers and buyers may post bids and offers, or a forum where the parties trade on a separate platform or in a peer-to-peer manner.

Generally, a provider of virtual asset custody services or a VATP operator will need to be licensed under the VASP Act, when phase two of the VASP Act is activated, but currently they only need to be registered.# Other virtual service providers will only generally be required to register.

6. Do different crypto-asset rules apply to wholesale and retail markets, for example, on the sale of derivatives?

The VASP Act does not distinguish between wholesale and retail markets. The key question is whether a virtual asset service is being provided.

7. Does any existing or proposed national law impose requirements on issuers of stablecoin?

Stablecoin will generally fall within the definition of "virtual asset", and therefore the VASP Act will apply.

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