



The introduction of the Virtual Asset and Initial Token Offering Services Act 2021

Driven by its ambition to widen its service offerings and promote itself as an International Financial Centre of choice, Mauritius is on a constant quest for innovation, which has amplified in recent years thanks to the digital revolution. In fact, the number of Virtual Assets in circulation worldwide¹ grew from about 66 in 2013 to around 7,557 in 2021 and the total market capitalization of all crypto assets, including stablecoins and tokens, amounted to almost USD2.6 trillion in 2021.

The Government primarily aims to ensure that its financial services sector and its business activities are driven by comprehensive legislations that are on par with international standards including those that help in the mitigation and prevention of money laundering and terrorist financing risks in line with recommendation 15 of the Financial Action Task Force (FATF). Along the same line, the Virtual Asset and Initial Token Offering Services Act 2021 (hereinafter referred to as the “Act”) was introduced on 7 February 2022. Furthermore, the Financial Services Commission (“FSC”) issued the AML/CFT Guidance Notes for Virtual Asset Service Providers and Issuers of Initial Token Offerings (the “AML/CFT Guidance Notes”) on 28 February 2022.

The FSC is responsible for regulating and supervising virtual asset service providers and issuers of initial token offerings.

What are Virtual Assets and Initial Token Offerings?

The Act defines Virtual Assets (VAs) as ‘digital representation of value that may be digitally traded or transferred, and may be used for payment or investment purposes’, and clarifies that VAs exclude digital representations of fiat currencies, securities and other financial assets that fall under the purview of the Securities Act.

Initial Token Offerings (ITO) means an offer for sale to the public of a virtual token in exchange for fiat currency or another virtual asset. This transaction is led by an Issuer of ITO.

A Virtual Asset Service Provider (“VASP”) is any person wishing to carry out business activities as detailed below:

Licence type	Provides for:
Class M (Virtual Asset Broker-Dealer)	Exchange between: <ul style="list-style-type: none">• VAs and fiat currencies• one or more forms of VAs
Class O (Virtual Asset Wallet Services)	Transfer of VAs
Class R (Virtual Asset Custodian)	Safekeeping and administration of VAs or instruments enabling control over VAs

Licence type	Provides for:
Class I (Virtual Asset Advisory Services)	Participation in and provision of financial services related to an issuer's offer and/or sale of VAs
Class S (Virtual Asset Market Place)	Virtual Asset Exchange* <i>*Broadly defined as a virtual platform facilitating the exchange of VAs</i>

A bank may, with the approval of a central bank, apply for a licence under "R" and "I". A bank or a holder of licence issued under the National Payment Systems Act can apply for "M", "O" and "S" licence via their subsidiary with the consent of the Central Bank.

Amongst others, the VASP:

- a. has the financial obligation to maintain a minimum stated unimpaired capital as prescribed in FSC Rules
- b. shall ensure that audited Financial Statements are filed with the FSC not later than 4 months after the close of its financial year
- c. shall maintain proper systems and controls in line with the scale and nature of its business activities
- d. shall ensure that each of its controllers, beneficial owners, associates and officers satisfy the 'fit and proper' criteria of the FSC
- e. shall ensure that it has sound and adequate measures in place for AML/CFT purposes
- f. must be directed and managed in Mauritius
- g. must have a physical office in Mauritius

With regard to issuers of Initial Token Offerings (ITO), any person wishing to carry out business activities as an Issuer of ITO must register with the FSC and can do so through a virtual exchange in Mauritius or an equivalent accepted by the FSC.

Issuers of ITO will be required to, inter alia:

1. Provide for a White Paper, which discloses a list of prescribed information permitting potential purchasers to make an informed decision. The White Paper must be published on the website of the issuer
2. Ensure that any advertisements relating to ITO are accurate, clearly identifiable, in line with the information contained in the White Paper and does not contravene relevant FSC Rules
3. Establish sound and adequate measures for AML/CFT purposes

Other salient features from the Act

Registers: The FSC will publish a Register of VASPs and Issuers of ITO containing key information on the business activities and the applicants on its website.

Existing business activities: Any person who is currently carrying out the following business activities will be required to apply for a licence or registration (as applicable) with the FSC not later than 3 or 18 months after the commencement of the Act, respectively:

1. a VASP or an issuer of ITO in accordance with the Act; or
2. Digital Assets custodians, i.e. entities entrusted with safekeeping digital asset held or transacted

Offence: Any VASP or Issuer of ITO who contravenes the Act shall commit an offence and shall, on conviction, be liable, where no specific penalty is provided, to a fine not exceeding 5 million rupees and to imprisonment for a term not exceeding 10 years.

The above set of features are not exhaustive, and further information is given in the official publication, accessible [here](#)

In a bid to provide even more clarity on the VAITOS Act 2021, the FSC has also come out with an FAQ, accessible [here](#)

Main features of the AML/CFT Guidance Notes

As part of its ongoing fight against Money Laundering and Terrorism Financing (ML/TF), the FSC has further issued the AML/CFT Guidance Notes in an effort to educate VASPs and issuers of ITOs (IITOs) on the risks associated with VA activities.

With VA activities being complex in nature, the National Risk Assessment (NRA) concluded that on the overall ML/TF residual risk associated to VAs/VASPs was considered to be “Very High” after the consideration of mitigating measures. The NRA was carried out using the World Bank methodology and risk assessment tool.

At the core, the AML/CFT Guidance Notes aims to provide VASPs and IITOs with an understanding of their specific AML/CFT compliance obligations under the VAITOS Act 2021, such as, amongst others:

1. as financial institutions, VASPs and IITOs are required to comply with all the relevant AML/CFT legislations and regulations;
2. adhering to an AML/CFT Risk-Based Approach;
3. conducting Customer Due Diligence (CDD) – the Guidance Notes further touches upon the need to carry out Enhanced Due Diligence (EDD) Procedures in certain specific circumstances; and
4. implementing and maintaining effective transaction monitoring systems

You can access the full AML/FCT Guidance Notes publication [here](#) for more information.

As of the date of this writing, the application forms relating to the licences issuable under the Act are not yet available to the public. However, should you have any queries on the above, feel free to contact us on info@intercontinentaltrust.com

¹ Statista: [Number of cryptocurrencies worldwide from 2013 to February 2022](#)

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