

Statutory Instrument No. of 2022

VIRTUAL ASSETS ACT
(Act No. ... of 2022)

VIRTUAL ASSETS REGULATIONS, 2022
(Published on , 2022)

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SCHEDULE

IN EXERCISE of the powers conferred on the Minister of Finance and Economic Development by section 36 of the Virtual Asset Act, the following Regulations are hereby made -

Citation 1. These Regulations may be cited as the Virtual Assets Regulations, 2022.

Application for licence 2. (1) In accordance with section 10 of the Act, a person shall not carry out or participate in a virtual asset business unless such person holds a virtual

asset service provider licence or issuer of initial token offerings licence issued by the Regulatory Authority.

(2) An application for a licence to carry out business as a virtual asset service provider or issuer of initial token offering shall be made in Form 1 set out in the Schedule.

(3) An application for a licence under subregulation (2) shall be accompanied by -

- (a) full personal details, qualifications, experience and economic interests of the applicant's -
 - (i) organiser,
 - (ii) issuer,
 - (iii) founder,
 - (iii) investor,
 - (iv) security holder, and
 - (v) manager and other senior officers;
- (b) full personal details, qualifications, experience, economic interests and occupation of the applicant's -
 - (i) directors, if the applicant is a legal person,
 - (ii) shareholders, if the applicant is a legal person, and
 - (iii) beneficial owner;
- (c) constitution of the applicant and other incorporating documents, if the applicant is a legal person;
- (d) a business plan which shall *inter alia* set forth the -
 - (i) financial and operational projections of the virtual asset business,
 - (ii) systems and controls of the virtual asset business,

- (ii) internal control procedures of the applicant, and
 - (iii) proposed organisational structure, staffing requirements and the powers and duties of office bearers;
- (e) copies of contracts and arrangements for oversight of activities as the Regulatory Authority may require;
 - (f) evidence of the minimum financial requirements as required in regulation 4;
 - (g) evidence of human and technology resources sufficient to efficiently operate and manage the virtual asset business as required in regulation 5, including the applicant's principal business address and website;
 - (h) business rules, as required in regulation 7, for virtual token exchange, initial token offerings or payment service utilising virtual assets adequate to ensure, as far as is reasonably practicable, that the virtual asset business will operate fairly, transparently and in an orderly way as provided in Part IV of the Act;
 - (i) adequate systems and controls, in accordance with regulation 8, to maintain market integrity, including avoidance of market abuse;
 - (j) the class of virtual assets intended to be traded or available for subscription;
 - (k) an application fee in the amount of P5,000; and
 - (l) additional requirements as contained in the Act and these Regulations, as the Regulatory Authority may direct.

(4) Any person who contravenes subregulation (1) commits an offence and shall, on conviction, be liable to the penalty provided in section 31 of the Act.

Issue of licence 3. (1) Where, on application made under regulation 2, the Regulatory Authority is satisfied that the applicant meets the requirements in section 11 of the Act, the Regulatory Authority may issue the applicant with -

- (a) a virtual asset service provider licence set out in Part A, in Form 2 of the Schedule; or

(b) an issuer of initial token offerings licence set out in Part B, in Form 2 of the Schedule.

(2) A licence issued under this regulation may contain such conditions as the Regulatory Authority may determine.

Minimum financial requirements

4. (1) A licence holder shall have and maintain at all times minimum financial resources comprising -

(a) cash amounts equal to one half of the estimated gross operating costs of the virtual asset business for the next 12 month period; and

(b) such other base capital amount as may be set by the Regulatory Authority.

(2) The Regulatory Authority may increase the minimum base capital under subregulation (1)(a) as it may deem necessary depending on the risk profile of the virtual asset business.

(3) A licence holder shall have financial resources adequate with respect to the nature, size, and complexity of the virtual asset business for the purpose of guarding against the risk of failure to fulfil liabilities as they fall due.

Human and technology resources

5. (1) A licence holder shall, to the satisfaction of the Regulatory Authority, have sufficient human and technology resources to operate a virtual asset business.

(2) For purposes of subregulation (1), a licence holder shall satisfy the Regulatory Authority with respect to -

(a) employing fit and proper staff, appropriately trained for the duties to be performed and trained to the standards required;

(b) appointing a key management team with adequate levels of experience and expertise to supervise and monitor the operations of the virtual asset business; and

(c) owning technology resources that are established and maintained in such a way as to ensure that they are secure and maintain the confidentiality of the data they contain.

(3) In considering whether a person is a fit and proper person, the Regulatory Authority shall, in accordance with section 11 (2) of the Act, have regard to -

- (a) financial status or solvency of the person;
- (b) economic interests;
- (c) relevant education, qualifications and experience;
- (d) the ability to perform the relevant functions properly, efficiently, honestly and fairly;
- (e) reputation, character, financial integrity and reliability; and
- (f) criminal record or conviction for any offence involving dishonesty or fraud.

Virtual asset business to establish proper markets

6. A virtual asset business shall, to the satisfaction of the Regulatory Authority, establish and operate proper markets that are conducive to the economic good and that do not cause or promote instability by having -

- (a) a sufficiently liquid underlying cash market; and
- (b) capacity to make and take delivery of securities or underlying assets.

Business and default rules

7. (1) A virtual asset business shall, to the satisfaction of the Regulatory Authority, have clear and fair business rules which are -

- (a) legally enforceable by purchasers and customers; and
- (b) published and made freely available.

(2) A licence holder shall have compliance procedures in place to ensure that -

- (a) the business rules in subregulation (1) are enforced;
- (b) complaints regarding its virtual asset services and appeal procedures are in place; and
- (c) where appropriate, a disciplinary action resulting in financial and other types of penalties is available.

(3) The business rules in subregulation (1) shall be approved by the Regulatory Authority.

(4) The business rules in subregulation (1) shall specify the class of virtual assets traded on or available for subscription, and requirements with respect to -

- (a) a licence holder's financial reporting, how regular reports are made and the international accounting standards or any other accounting standard accepted by the Regulatory Authority to which they comply;
- (b) auditing standards;
- (c) the licence holder's track record in terms of profit or operating history;
- (d) any restrictions that may exist on transferability or virtual token exchange; and
- (e) any other relevant matter deemed necessary by the Regulatory Authority.

(5) A virtual asset business shall have default rules in place which in the event of a purchaser or customer being or appearing to be unable to fulfil its obligations in respect of one or more contracts, enables action to be taken with respect to unsettled virtual assets transactions to which the purchaser or customer is a party.

Systems and controls

8. (1) A licence holder shall at all times ensure that its systems and controls are adequate and suitable for the performance of a virtual asset business and appropriate to the size and nature of its operations.

(2) The systems and controls in subregulation (1) shall be in relation to the -

- (a) transmission of information to purchasers and customers in its blockchain or using its distributed ledger technology platform;
- (b) assessment and management of risks;
- (c) safeguarding and administration of assets which belong to purchasers or its customers; and
- (d) the fitness and propriety of its employees and the adequacy of the technology resources.

(3) A licence holder shall have systems and controls in relation to the supervision and monitoring of transactions on its blockchain or trading systems.

(4) A licence holder shall carry out regular reviews of its systems and controls.

Transaction recording procedures

9. A licence holder shall ensure that satisfactory arrangements are made for -

- (a) recording the activity and transactions effected on or through its blockchain and distributed ledger technology platform;
- (b) maintaining the activity and transaction records for at least seven years; and
- (c) providing the Regulatory Authority or any competent authority with such records in a timely manner as the Regulatory Authority or competent authority may require.

Safeguarding and administering assets

10. Where a distributed ledger technology platform provides for the safeguarding and administration of assets which belong to purchasers and customers, a licence holder shall ensure that -

- (a) satisfactory arrangements are made for that purpose; and
- (b) clear terms of agreement exist between the purchaser, customers and the licence holder in relation to the virtual asset.

Customer protection

11. (1) A licence holder shall at all times provide safeguards to ensure customer protection to such standard as the Regulatory Authority may determine.

(2) Without derogating from the generality of subregulation (1), a licence holder shall have business rules, procedures and an effective surveillance programme that ensure that a virtual asset business conducted on or through its distributed ledger technology platform or trading systems is conducted in an orderly manner to provide proper protection to customers, including monitoring for conduct which may amount to market abuse, financial crime or money laundering.

Ongoing compliance

12. (1) A licence holder shall provide, to the satisfaction of the Regulatory Authority, details of how the licence holder will ensure ongoing compliance with its business rules under regulation 7.

(2) Pursuant to subregulation (1), a licence holder shall have compliance procedures in place to ensure that -

- (a) the business rules are enforced;
- (b) complaints regarding persons granted access to its distributed ledger technology platform are investigated;
- (c) appeal procedures are in place; and
- (d) where appropriate, disciplinary action and appropriate penalties are available.

Ongoing obligations

13. (1) A licence holder shall at all times do all things necessary to make sure that its virtual asset services are fair, transparent, orderly and efficient for the purpose of reducing any systemic or any other type of risk that may adversely affect fair and orderly virtual token exchange or trading of the virtual assets.

(2) A licence holder shall submit to the Regulatory Authority a report in writing, at such times as the Regulatory Authority may direct, addressing matters affecting the virtual assets business and such other matters as the Regulatory Authority may direct to be submitted.

(3) The report in subregulation (2) may include -

- (a) ongoing compliance by the licence holder with the terms of the licence;
- (b) complaints received and resolutions reached;
- (c) disciplinary matters arising and dealt with;
- (d) adequacy and performance of systems and controls;
- (e) financial matters concerning the operation of the virtual asset business; and
- (f) other relevant matter as the Regulatory Authority may determine.

Addressing complaints by customers

14. (1) A licence holder shall, to the satisfaction of the Regulatory Authority, have in place procedures to address complaints by purchasers, customers and users of its distributed ledger technology platform so as to ensure that due process is upheld on an ongoing basis.

(2) The procedures in subregulation (1) shall include -

- (a) effective arrangements for the investigation and resolution of complaints made against the licence holder's virtual asset services;
- (b) establishing and maintaining a register of complaints made against the licence holder's virtual asset services and resolutions reached with the purchaser, customer or user.

(2) A licence holder shall keep and maintain the records of the complaints in subregulation (1) for a minimum of seven years.

Deterrence of market abuse

15. (1) A licence holder shall have appropriate measures to identify, deter and prevent market abuse, financial crime and money laundering on and through its distributed ledger technology platform and report to the Regulatory Authority any market abuse or suspicious transaction.

(2) Pursuant to subregulation (1), a licence holder shall have rules and procedures to prohibit or prevent any -

- (a) transaction intended to create a false appearance of a trading activity;
- (b) virtual token exchange or initial token offering executed for improper purposes; and
- (c) transaction intended to assist or conceal any potentially identifiable market abuse or financial crime.

Promoting and maintaining standards

16. (1) A licence holder shall, from time to time, provide to the Regulatory Authority details of how it will promote and maintain professional conduct as required under section 26 of the Act.

(2) For purposes of subregulation (1), a licence holder shall -

- (a) take all the necessary steps to promote and maintain high standards of integrity and fair dealing in the carrying on of a virtual asset business on or through its distributed ledger technology platform or trading systems; and
- (b) cooperate with the Regulatory Authority with regard to regulatory matters as the Regulatory may determine.

Disclosure of information to

17. A licence holder shall have appropriate procedures and protection for allowing employees to disclose any information to the Regulatory Authority,

the Regulatory Authority competent authorities or comparable bodies involved in the prevention of market abuse, financial crime or money laundering.

False and misleading statements 18. (1) In accordance with section 31 of the Act, a person shall not, in connection with an application submitted to the Regulatory Authority for a licence under these Regulations -

(a) make a statement to the Regulatory Authority which he or she knows or ought reasonably to know is false or misleading; or

(b) omit to state any matter to the Regulatory Authority where he or she knows or ought reasonably to know that, because of the omission, the application is misleading.

(2) Any person who contravenes subregulation (1) commits an offence and is liable to -

(a) the penalty under section 31; and

(b) any administrative penalty that may be imposed by the Regulatory Authority under section 33.

SCHEDULE

Form 1

APPLICATION TO BE LICENSED AS A VIRTUAL ASSET SERVICE PROVIDER OR
ISSUER OF INITIAL TOKEN OFFERINGS
(reg 2(2))

Address of applicant:
.....
.....
Date 20.....

To:
The Chief Executive Officer
Non-Bank Financial Institutions Regulatory Office
Private Bag 00314
Gaborone
Botswana

I/We, the undersigned, do hereby apply for a licence in terms of section 10 of the Virtual Asset Act (Act No. ... of 2022) to operate a virtual asset business in Botswana.

I/we have taken note of section 31 (2) of the Virtual Asset Act regarding the consequences of giving false or misleading statements to the Regulatory Authority or falsely holding out as being licensed.

PART I - APPLICANT AND BUSINESS INFORMATION

- 1. Name of applicant
- 2. Trading name(s) of applicant
Provide all the names if different
- 3. Legal status of applicant (mark with x)

| Sole ownership/ Individual | Private company | Public company | Partnership | Financial Institution | Other (specify) |
|-------------------------------|-----------------|----------------|-------------|-----------------------|-----------------|
| | | | | | |

- 4. Official registration number of the above legal status
- 5. Date of commencement of trading as a Virtual Asset Service Provider or Issuer of Initial Token Offerings (dd/mm/yy)

6. Financial year end (dd/mm/yy)
7. Income tax registration number
8. VAT registration number (if applicable)
9. Contact details of the applicant (head office, if applicable)
10. Physical address
11. Postal address
12. Landline telephone number
13. Fax number
14. E-mail address
15. Website

Note 1: Similar details to be provided if there are any branches with a different address. Provide on separate sheet of paper.

Note 2: If virtual assets are traded on another virtual token exchange in any jurisdiction, provide full details of listing and provide a list of affiliates of the applicant, indicating the nature of the relationship, businesses the affiliate is in, where the affiliate is incorporated etc.

16. Contact details of the issuer or organiser:

- Title
- Full name(s)
- ID number:
- Telephone number (office)
- E-mail address

Note: The issuer in terms of section 2 of the Act means the person contractually responsible for issuing a virtual token. The organiser, if different from the issuer, means the person procuring the issuance of a virtual asset through the issuer. Provide a short Curriculum Vitae to show experience of both the issuer and organiser.

17. Auditor/Accountant:

- Name of firm/person
- Physical address
- Postal address
- Name of responsible person (if a firm)
- Telephone number
- Fax number
- E-mail address
- Professional registration number/practice number
- Name of Professional body registered with

18. Banker:

- Name of bank

Branch name
 Name of holder of main business account for virtual asset business

 Account number

I/we enclose an original letter from my/our bank confirming the above.

Note: If there is more than one such account due to branches or virtual tokens traded outside Botswana, provide full details.

PART II - FOUNDER(S) OF THE VIRTUAL ASSET BUSINESS

Note: The definition of a founder is provided in section 2 of the Virtual Assets Act.

19. Provide the following in respect of each of the founder(s) including the issuer, organiser and beneficial owner(s):

| First Name(s) | Surname | ID/ Passport Number | Nationality | Designation (Owners, Beneficial Owner, Directors and Senior Management) | In case of Owners and Beneficial Owners please provide percentage of ownership |
|---------------|---------|---------------------|-------------|---|--|
| | | | | | |
| | | | | | |
| | | | | | |

Note: Attach Curriculum Vitae for each founder and persons above, and indicate any tertiary qualifications, abbreviated employment history and specific contribution to be made in respect of the virtual asset business.

20. Provide full details for each person who is to carry out the virtual asset business on behalf of the applicant, including manager(s) or senior officer(s).

.....

21. State whether the applicant or any founder, owner, beneficial owner, issuer, organiser, director, manager or senior officer of the applicant has ever been -

(a) disciplined, denied admission or registration, or had their registration or membership revoked by any stock exchange, virtual token exchange, regulatory or competent authority or professional association in any jurisdiction;
 Yes/No.....

(b) declared bankrupt, convicted of a crime or been sued under any commercial, securities, company or any law concerning fraud or misrepresentation;

Yes/No.....

(c) involved with an application for regulatory approval in any jurisdiction where that application has been refused or withdrawn;

Yes/No.....

(d) dismissed from any office or employment, or barred from entry into any profession or occupation;

Yes/No.....

or

(e) compulsorily wound up or made any compromise or arrangement with creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims;

Yes/No

If you answered yes to any of the above, provide full details

.....
.....
.....

PART III - FINANCIAL STATEMENTS

22. The following financial information is hereby provided:

(a) if the applicant has been established within six months from the date of application and the applicant has not commenced operations -

- i. a sworn statement from the founder, issuer or organiser of the applicant confirming that the applicant has not commenced trading and that no financial statements have been produced or dividends declared,
- ii. statement of financial position of the applicant from the date of establishment to the date of application,
- iii. three-year financial projections of the applicant;

(b) for all other applicants -

- i. audited financial statements for two financial years immediately prior to the date of application or since the date of establishment, whichever is closest or equivalent to two years,
- ii. the auditor's report accompanying the audited financial statements,
- iii. interim financial statements of the applicant for the prior two quarters, signed and certified by the founder, issuer or organiser to be true and complete; and

(c) if the applicant has any founder or significant interest holder who is a legal person, for each founder or such interest holder -

- i. audited financial statements for the two financial years immediately prior to the date of application or since the date of establishment, whichever is closest or equivalent to two years,
- ii. the auditor's report accompanying the audited financial statements, and
- iii. most recent interim financial statements signed and certified by a director, manager or company secretary to be true and complete.

Note: A copy of your most recent set of financial statements must be provided

PART IV - FUNDING

23. The existing and/or intended sources of funds to be utilised in the virtual asset business are as follows:

| Type of Funding | Approximate Percentage |
|----------------------------|------------------------|
| Own funds | |
| Borrowed funds | |
| Donor funds | |
| Any other (please specify) | |

PART V - DESCRIPTION OF BUSINESS

24. Applicant must provide a description of the business (existing and/or proposed business for next two years) describing the class of virtual assets, including an indication of the total monthly cost of credit rate associated with each virtual asset, marketing methods, customer focus, geographical spread of the virtual asset business and branches, number of persons to be employed, methods to ensure compliance with statutory responsibilities, administrative procedures and control. (Use separate piece of paper).

PART VI - OPERATIONAL CAPABILITY

25. Describe briefly the system and controls to be used in the virtual asset business.

26. Provide a detailed description of the applicant's operational capabilities, including the physical premises, cybersecurity protocols, data management systems, data protection systems, risk management systems, banking, virtual clearing, virtual custody arrangements and communication capabilities, as applicable.

27. Provide names and addresses of principal bankers, virtual custodians, virtual asset providers and other service and technical providers, as applicable.

28. Do you engage in any other activity than the virtual asset business hereby applied for?
 Yes/No.....
 If yes, please provide full details of the activity

.....
29. Are there any other ancillary products which the applicant or its holding company or subsidiary or affiliate sell, or intends to sell, in conjunction with the virtual asset business applied herewith:

Yes/No

If yes, provide full details of the ancillary products

.....
.....
30. Explain the relative importance and volumes of these ancillary products in relation to the virtual asset business applied herewith

.....
.....
Provide a schematic group structure and indicate whether the entity operates as a principal or intermediary for each specific ancillary product

.....
.....
PART VII - DECLARATION OF NATURAL PERSONS

This part must be completed and signed by each natural person mentioned in Part II (make additional copies if necessary).

Declaration

I/We, the undersigned, declare that the above information is true and correct to the best of our knowledge and belief and undertake to provide any other information that may be required by the Regulatory Authority.

I/We, the undersigned declare that none of us have a criminal record or conviction for any offence involving dishonesty or fraud.

I/We, the undersigned, hereby give permission to the Botswana Police Criminal Record Center to furnish the Regulatory Authority or its authorised agents with my/our previous convictions or any relevant information in their possession, including any directions by the Court for my/our detention in a mental hospital or prison.

I/We hereby indemnify the Botswana police criminal center, its employees, the Regulatory Authority, its agents and its employees and hold them harmless against any claims by myself/ ourselves or any other person that may arise out of or be connected with such disclosure as well as any legal costs, including attorney and client costs.

| First Name and Surname | ID/ Passport Number | Signature | Date |
|------------------------|---------------------|-----------|------|
| | | | |

| | | | |
|--|--|--|--|
| | | | |
| | | | |

ATTACHMENTS

I/We enclose the following:

1. Non-refundable application fee of P5 000 (Five Thousand Pula)
2. All additional information as to be provided in the Application form above;
3. Identity documents, including passports and proof residence for each natural person in Part II;
4. Constitution of the company or any document by which the applicant is constituted (if applicable);
5. Certificate of Incorporation from Registrar of Companies (if applicable);
6. Copy of a document showing income tax registration number;
7. A copy of any other registration or licensing certificate (if applicable);
8. Copy of the latest financial statements of the business (if already conducting a virtual asset business) or statement of financial position (if the applicant has not commenced operations);
9. Copy of the applicant’s detailed and up to date business plan, inclusive of financial and operational projections, staffing requirements, a description of the products and services offered, target market and technological requirements;
10. Copy of the applicant’s written supervisory, internal controls and risk management policies and procedures;
11. Evidence that the applicant has adequate insurance and minimum base capital in accordance with regulation 4;
12. organisational structure, including job descriptions for each office bearer; and
13. A schedule of proposed fees for services rendered by the virtual asset business.

Yours faithfully

.....

Authorised signature

GENERAL NOTES:

1. Where an answer or documentation requested above is not known or available it is essential that this be brought to the attention of, and explained to, the Regulatory Authority. Any application not fully completed will be returned to the applicant.
2. Any founder, issuer, organiser, manager or officer appointed after the approval of a license must within 30 days of such appointment complete and submit PART II and PART VII of this Form to the Regulatory Authority.
3. A prospective applicant needs to establish as a company in Botswana, if applicable, before formal application.

Form 2

LICENCE TO CARRY ON A VIRTUAL ASSET BUSINESS
(reg 3(1))

PART A

Certificate No.

NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY
REPUBLIC OF BOTSWANA

VIRTUAL ASSETS ACT
(Act No. of 2022)

VIRTUAL ASSET SERVICE PROVIDER LICENCE

This is to certify that has been duly licensed by Non-Bank Financial Institutions Regulatory Authority to carry out the business as a Virtual Asset Service Provider.

This licence is not transferable and remains the property of the Non-Bank Financial Institutions Regulatory Authority.

Dated this day of 20..... in Gaborone.

Signed:.....
CHIEF EXECUTIVE OFFICER

