



Frequently Asked Questions

Virtual Asset and Initial Token Offering Services Act 2021

1. What is the Virtual Asset and Initial Token Offering Services Act 2021?

The [Virtual Asset and Initial Token Offering Services Act 2021](#) (the “Act” or “VAITOS Act 2021”), has come into force on the 7th of February 2022. The Act provides for a regulatory framework for new and developing activities regarding Virtual Assets (“VAs”) and Initial Token Offerings (“ITOs”) in Mauritius, as well as to safeguard against money laundering and financing of terrorism associated with VAs.

2. What is a Virtual Asset?

A Virtual Asset (“VA”), according to the VAITOS Act 2021, is a digital representation of value which may be digitally traded or transferred, and may be used for payment or investment purposes, but does not include a digital representation of fiat currencies, securities and other financial assets that fall under the purview of the Securities Act.

3. What are the benefits of the VAITOS Act 2021?

Mauritius, as an international financial centre and growing FinTech hub is amongst the first countries in the Eastern and Southern African region which has adopted a comprehensive legislation on VAs and ITOs. The VAITOS Act 2021 will provide a clear and comprehensive basis for operators as FinTech develops in Mauritius, whilst aligning the legal framework for regulating such class of assets with international standards.

4. Who regulates the VAITOS Act 2021 in Mauritius?

The Act empowers the Financial Services Commission, Mauritius (the “FSC”) to regulate and supervise Virtual Asset Service Providers (“VASPs”) and issuers of ITOs within the non-bank financial services sector in Mauritius.

5. How does regulating VASPs and issuers of ITOs protect consumers?

Mauritius is committed to meeting international standards with regards to Anti-Money Laundering and Countering the Financing of Terrorism (“AML/CFT”) measures. This legislation has been enacted to regulate VAs as a result of

recommendation 15 of the Financial Action Task Force which requires that VASPs and issuers of ITOs are regulated with respect to AML/CFT obligations. Regulating services involving VAs help to ensure that only legitimate business takes place in the country, which in turn protects the users of these services.

The FSC intends to publish guidelines which will, *inter alia*, ensure that prospective investors are aware of risk associated with VAs in a transparent manner.

6. What will this new legislation address?

The VAITOS Act 2021 will, *inter alia*, address several fundamental aspects, such as technical requirements, governance structures, risk management, disclosure of information for VASPs and the protection of the rights of clients of VAs and Virtual Tokens (VTs). The Act will further provide for timely, accurate and transparent disclosure by issuers of ITOs.

7. What categories of activities are licensed under this Act?

The Act regulates two main categories of activities:

A. VASP, meaning a person who conducts, as a business activity, for or on behalf of another person one or more of the following activities or operations, namely:

- (i) exchange between VAs and fiat currencies;
- (ii) exchange between one or more forms of VAs;
- (iii) transfer of VAs;
- (iv) safekeeping of VAs or instruments enabling control over VAs;
- (v) administration of VAs or instruments enabling control over VAs; or
- (vi) participation in, and provision of, financial services related to an issuer's offer and sale of a VA; or an issuer's offer or sale of a VA.

B. Issuers of ITOs, are companies registered under the Act and making issuance of ITOs. An ITO is an offer for sale to the public of a VT in exchange for fiat currency or another VA.

8. What are the different licences available under the VASP regime?

VASP consists of several sub-categories of licences as follows:

- Holders of **Class M** (Virtual Asset Broker-Dealer) licences carry out activities such as exchange between VAs and fiat currencies; or exchange between one or more forms of VAs.
- **Class O** (Virtual Asset Wallet Services) licences pertain to the transfer of VAs.
- **Class R** (Virtual Asset Custodian) licensees are responsible for safekeeping of VAs or instruments enabling control over VAs; administration of VAs or instruments enabling control over VAs.
- **Class I** (Virtual Asset Advisory Services) licence is required for the participation in and provision of financial services related to an issuer's offer and/or sale of VAs.

- Virtual asset exchanges must apply for a **Class S** (Virtual Asset Market Place) licence. A Virtual Asset Exchange is a centralised or decentralised virtual platform, whether in Mauritius or in another jurisdiction which facilitates the exchange of VAs for fiat currency or other VAs on behalf of third parties for a fee, a commission, a spread or other benefit and which:
 - i. holds custody, or controls VAs, on behalf of its clients to facilitate an exchange or
 - ii. purchases VAs from a seller when transactions or bids and offers are matched in order to sell them to a buyer.

The definition of Virtual Asset Exchange also includes the owner or operator of the virtual platform, but excludes a platform only providing a forum where sellers and buyers may post bids and offers and a forum where the parties trade in a separate platform or in a peer-to-peer manner.

9. What activities/services are not covered under the VAITOS Act 2021?

The VAITOS Act 2021 does not *inter alia* apply to:

- i. closed-loop items which are non-transferable, non-exchangeable and cannot be used for payment or investment purposes, and which a person cannot sell onward on a secondary market outside of the closed-loop system;
- ii. digital currencies issued by the central bank or the central bank of a foreign jurisdiction, and
- iii. digital representations of fiat currencies, securities and other financial assets.

10. Can banks or holders of licences issued under the [National Payment Systems Act](#) ('NPS licensee') also apply for a licence under the Act?

Yes. This is however subject to certain conditions such as: -

1. The written approval of the regulator (i.e. the Bank of Mauritius) must be obtained before an application is submitted; and
2. A class "M" licence, class "O" licence or class "S" licence can only be issued to the subsidiary of the bank or the NPS licensee (as opposed to the bank or the NPS licensee itself).

It is to be noted that a bank can apply for a class "R" licence or a class "I" licence, provided that the written approval of the Bank of Mauritius is obtained.

11. What are the requirements for the application of a VASP licence?

1. An application for a VASP licence, specifying the relevant class or sub-category of licence sought, must be made to the FSC.

2. The applicant must:
 - i. be a duly registered company carrying on business activities in or from Mauritius;
 - ii. be directed and managed from Mauritius;
 - iii. have a physical office in Mauritius and
 - iv. ensure that each of its controllers, beneficial owners, associates and officers satisfy the 'fit and proper' criteria of the FSC.

In its determination of whether the applicant is directed and managed from Mauritius, the FSC may consider:

- i. the location of the strategy, risk management and operational decision making;
- ii. the location of the executives responsible for such decision making or the management team meets to effect policy decisions;
- iii. where board meetings take place; and
- iv. the place of residence of officers, employees or directors, amongst other factors.

12. What are the continuing obligations of VASPs?

The requirements attached to the licences under the Act are, to a certain extent, comparable to the licensing requirements under the Financial Services Act (the "FSA"). For instance, no shares or legal or beneficial interest in a licensee may be transferred to a person without the approval of the FSC if:

- i. such transfer is less than 5 per cent,
- ii. the transfer does not result in a person holding more than 20% of the shares or the legal or beneficial interest, and
- iii. the transfer does not result in a change of control. In those instances, written notice to the FSC is sufficient. Conversely, if the aforementioned criteria are not met, the prior approval of the FSC is required for a transfer.

It is to be noted that the approval of the FSC is equally required for issues of shares, the appointment of controllers, beneficial owners and officers of a licence, modifying the scope of the VASP's activities, reorganisation of a VASP's legal structure, mergers, any change of name or a change of external auditor.

In addition, adequate systems and controls must be implemented at all times to prevent market abuse and when keeping VAs in their custody, VASPs must further ensure that a sufficient amount of each type of VAs is maintained to meet its obligations towards clients.

VASPs also have the financial obligation to maintain a minimum stated unimpaired capital depending on the class or subcategory of licence, segregate its accounts from those of its clients, maintain proper record keeping (including keeping information on the originators and beneficiaries involved in any transfer of VAs), and file its annual audited financial statements to the FSC.

Finally, another key imperative that has to be scrupulously complied with by VASPs is related to the setting of sound and adequate measures for AML/CFT purposes.

13. Who are Issuers of ITOs?

An issuer of ITO means a company making an offer for sale to the public of a VT (i.e. any cryptographically-secured digital representation of a set of rights, including smart contracts, provided on a digital platform and issued or to be issued by an issuer of initial token offerings) in exchange for fiat currency or another VA.

14. What are the requirements for registration of ITOs?

An Issuer of ITOs must be registered with the FSC if they carry on business in or from Mauritius and an application for registration can be made through a virtual exchange in Mauritius (or an equivalent accepted by the FSC) at least 45 days before the start of the offer period and such application is processed within 30 days.

15. What are the continuing obligations of issuers of ITOs?

A key obligation for issuers of ITOs is to establish and maintain a White Paper signed by every member of the governing body of the issuer and which provides full and accurate disclosure of a list of prescribed information (including the class(es) of VT available for subscription) allowing potential purchasers to make an informed decision. This helps in ensuring the traceability of ITOs. The White Paper is published on the issuer's website so that it is readily accessible and downloadable by potential purchasers for the duration of the offer period of VTs (which must not exceed 6 months) and at least 15 days after the offer period ends.

If the issuer becomes aware of any information that may affect the interests of purchasers before the closure of the offer period, a disclosure of the information should be made to the FSC by giving written notice and providing a supplement to the White Paper. Any changes in the class(es) of VTs made available require the prior approval from the FSC.

Advertisement of ITOs should be clearly identifiable and be consistent with the information in the White Paper and should in no way be misleading or in contravention with the rules of the FSC. In case of a material misrepresentation in the White Paper, a purchaser will have the right to claim rescission of the subscription or damages from the issuer of ITOs. The purchaser may equally withdraw his purchase by giving written notice to the issuer of ITOs not later than 72 hours after the date of the agreement to purchase the VT.

Similar to VASPs, issuers of ITOs are required to carry out their business activities with honesty and with due diligence and are required to maintain the confidentiality of their clients in accordance with the data protection law. Issuers of ITOs must also

abide by their obligations under the Act to avoid any penalties. Issuers of ITOs have, in addition, to establish sound and adequate measures for AML/CFT purposes, at all times.

16. Should unlicensed VASPs and issuers of ITOs who are already operating, seek a licence?

Yes. The Act also provides for unlicensed VASPs and issuers of ITOs who have been operating prior to the commencement of the Act. The latter will have to satisfy a transitional period of 3 or 18 months after the commencement of the Act to submit, as the case may be, an application for a licence or registration.

17. What are the key supervisory functions of the FSC under the VAITOS Act 2021?

The FSC will keep stakeholders and the public informed about possible scams through the issue of communiqués/investor alerts on its website and widely read newspapers. In addition to issuing the VASP licences and registering issuers of ITOs, the FSC's additional powers and functions include the following:

- i. maintaining a register of all VASPs and issuers of ITOs;
- ii. monitoring their business activities;
- iii. issuing guidelines to ensure compliance as appropriate;
- iv. promoting investor education which facilitate innovation;
- v. taking any measures with the Bank of Mauritius to ensure the stability of the financial system in Mauritius in respect of its licensees; and
- vi. carrying out onsite inspections, and exchanging information with other supervisory bodies and law enforcement agencies.

18. What are other/miscellaneous enforcement powers of the FSC?

Along with the provisions of the VAITOS Act 2021, the FSC has, under the FSA, equally the requisite functions/objects/powers to identify unlicensed persons (including VASPs and Issuers of ITOs) and take appropriate actions through the following mechanisms:-

- i. The FSC maintains a wide network of information exchange arrangements with counterparts (local and international) in the form of Memorandums of Understanding ("MoUs") or Multilateral MoUs ("MMoUs") (Sections 6 and 87 of the FSA) under which it obtains information/intelligence including information about potential unauthorised/unlicensed persons acting as VASPs;
- ii. The whistleblowing framework (Section 45A of the FSA), under which information can be obtained from disclosures, including from the public in general;
- iii. Unlicensed VASPs are referred to the Police and the Director of Public Prosecutions. The FSC closely collaborates with these institutions, as well as,

other law enforcement authorities in prosecuting and applying other commensurate sanctions, as appropriate.

19. What are the sanctions for not complying under this Act?

Amongst other sanctions under the Act, fines of a maximum of MUR 5 million and a maximum imprisonment term of 10 years can be applied.

20. Can applicants for a licence/registration as a VASP or Issuer of ITO under the VAITOS Act 2021 also apply for Global Business Licence (“GBL”)?

Yes. VASPs and issuers of ITOs can apply for a GBL.

21. How will complaints be handled?

Should clients experience any issues with VASPs or issuers of ITOs in relation to their services, they should, as a first step, directly liaise with the latter to address or resolve their complaints/concerns.

In the event that the complaints/concerns, as mentioned above, are not addressed to the satisfaction of the clients, the latter may channel their complaints/concerns to the Office of Ombudsperson for Financial Services.

The contacts details are as follows:

Office of Ombudsperson for Financial Services

8th Floor, SICOM Tower, Wall Street, Ebène, Mauritius

Telephone number: 468-6475

Fax number: 468-6473

Email: ombudspersonfs@myt.mu

It is, however, to be noted that there are no specific or statutory compensation funds in Mauritius, which are applicable to the clients of VASPs and issuers of ITOs, as a result of any losses or damages incurred through the provision of services by VASPs and issuers of ITOs.

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