

Fintech Series - Guidance Notes

Recognition of Virtual Asset as an asset-class for investment by Sophisticated and Expert Investors Updated 23 August 2022

1. Introduction

- 1.1. The Financial Services Commission, Mauritius (the “FSC”), the integrated regulator for non-banking financial services and global business sectors, is committed in its engagement to promote the development of Fintech in the Mauritius International Financial Centre.
- 1.2. These Guidance Notes were issued by the FSC pursuant to its powers under Section 7 (1) (a) of the Financial Services Act (the “FSA”).
- 1.3. These Guidance Notes were first published by the FSC, as part of its Fintech Series, on 17 September 2018 and updated on 23 August 2022 to provide clarifications to its licensees and stakeholders regarding investment in ‘Digital Assets’.
- 1.4. Following the enactment of a new piece of legislation known as the [Virtual Asset and Initial Token Offerings Services Act 2021](#) (“VAITOS Act”), the FSC deemed it necessary to update the contents of the Guidance Notes to, *inter alia*, avoid any inconsistencies with the provisions of the VAITOS Act and the new definitions (such as ‘Virtual Asset’ or ‘Virtual Token’) provided therein.

2. Background of VAITOS Act 2021

- 2.1. The VAITOS Act came into force on 7 February 2022. It provides a comprehensive legislative framework for the regulation of Virtual Asset Service Providers and Issuers of Initial Token

Offerings and is in line with the international standards of Financial Action Task Force with respect to managing, mitigating and preventing any Money Laundering and Terrorism Financing (“ML/TF”) risks.

2.2. Key Definitions

2.2.1 Virtual Asset (“VA”)

A VA means –

- (a) a digital representation of value that may be digitally traded or transferred, and may be used for payment or investment purposes; but
- (b) does not include a digital representations of fiat currencies, securities, and other financial assets that fall under the purview of the Securities Act.

2.2.2 Virtual Asset Service Provider (“VASP”)

A VASP means a person that, as a business, conducts one or more of the following activities or operations, for, or on behalf of, another person:

- (a) exchange between virtual assets and fiat currencies;
- (b) exchange between one or more forms of virtual assets;
- (c) transfer of virtual assets;
- (d) safekeeping of virtual assets or instruments enabling control over virtual assets;
- (e) administration of virtual assets or instruments enabling control over virtual assets;
- (f) participation in, and provision of, financial services related to –
 - (i) an issuer’s offer and sale of a virtual asset;

- (ii) an issuer’s offer or sale of a virtual asset;

The Second Schedule of VAITOS Act provides a list of different classes of VASPs.

2.2.3 Initial Token Offering (“ITO”)

ITO refers to an offer for sale to the public, by an issuer of virtual token offerings, of a virtual token in exchange for fiat currency or another virtual asset.

3. Virtual Asset as an asset-class for investment

3.1. The FSC recognizes that VA may constitute an asset-class for investment by the following categories of investors:

- (a) Sophisticated investors¹;
- (b) Expert Investors²;
- (c) Expert Funds³;
- (d) Specialised Collective Investment Schemes⁴; and
- (e) Professional Collective Investment Schemes⁵.

3.2. Investments in VAs are considered to be high-risk in nature as their prices are extremely volatile in their exchange rates to fiat money. Consequently the FSC is of the view that

¹ The term “Sophisticated Investor” is defined in section 2 of the Securities Act 2005.

² The term “Expert Investor” is defined in regulation 78(a) of the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008 (CIS Regulations 2008).

³ The term “Expert Fund” is defined in regulation 2 of the CIS Regulations 2008.

⁴ The term “Specialised Collective Investment Scheme” is defined in regulation 77 of the CIS Regulations 2008.

⁵ The term “Professional Collective Investment Schemes” is defined in regulation 75 of the CIS Regulations 2008.

investments in VAs must be done only by investors who are sufficiently knowledgeable and financially literate.

4. Investments in Virtual Assets not protected by any statutory compensation arrangements in Mauritius

- 4.1. The FSC wishes to highlight that VAs, unlike fiat currencies, are not legal tender in Mauritius, although they can act as an effective medium for storing value.
- 4.2. The FSC, thus, urges all prospective investors to fully assess the risks related to VAs prior to committing any funds for investments.
- 4.3. In addition, the FSC hereby informs the public and prospective investors that any investments in VAs are at their own risks and that they are not protected by any statutory compensation arrangements in Mauritius.

Financial Services Commission

23 August 2022