



VIRTUAL ASSETS SERVICE PROVISION

NBFIRA

Non-Bank Financial
Institutions Regulatory
Authority





VIRTUAL ASSETS SERVICE PROVISION

The Virtual Assets industry is part of the Non-Bank Financial Institutions (NBFI) sector. A Virtual Asset Service Provider (VASPs) is a person who under an agreement and as part of a business, undertakes a virtual asset service on behalf of another person.

What are Virtual Assets?

The Virtual Assets Act of 2022 defines Virtual Assets as:

- digital representations of value that may be digitally traded or transferred and may be used for payment or investment purposes. The digital representation may further be distributed through a distributed ledger technology where value is embedded or in which there is a contractual right of use and includes virtual tokens.
- virtual assets exclude a digital representation of legal tenders as provided for under the Bank of Botswana Act, securities and other financial assets that are regulated under the Securities Act.

What is an Initial Token Offering (ITO)?

Initial Token Offering means an offer that is made to the public, by an issuer, for the sale of a virtual token in exchange for fiat currency (e.g., Botswana Pula, US Dollar) or another virtual asset.

What is a Virtual Asset business?

A virtual asset business includes a trade or a business that:

- (1) operates as an issuer of initial token offerings, thereby providing services that are related to a virtual token exchange.
- (2) operates as payment service providers utilising virtual assets.
- (3) serve as virtual asset service providers that distribute ledger platforms that:
 - (a) facilitate the exchange between virtual assets and fiat currency;
 - (b) facilitate the exchange between one or more forms of virtual assets,
 - (c) the transfer of virtual assets, or
 - (d) that participate in and provide financial services related to an issuer's offer or sale of a virtual asset as may be prescribed.



Who regulates virtual asset businesses in Botswana?

Virtual assets businesses are regulated by the Non-Bank Financial Institutions Regulatory Authority (NBFIRA), through the Virtual Assets Act 2022 and supporting Regulations, as well as Licensing Requirements. The Act commenced on February 25, 2022.

How is the Virtual Assets industry regulated?

The **Regulatory Authority's** mandate according to the Virtual Assets Act includes:

- (a) license virtual asset service providers and issuers of initial token offerings;
- (b) regulate, monitor and supervise the issuance of virtual assets and persons conducting virtual asset business in Botswana;
- (c) develop rules, guidance and codes of practice in connection with the conduct of virtual asset business and initial token offerings;
- (d) ensure the financial soundness and stability of the financial system in Botswana in respect of virtual assets;
- (e) advise the Minister on all matters relating to virtual assets business

Who does the Virtual Assets Act apply to?

The Virtual Assets Act applies to any person who as an organiser, issuer, founder, purchaser, or investor participates in the formation, promotion, maintenance, organisation, sale or redemption of an initial token offering.

The Act also applies to any person carrying on a virtual asset business irrespective of the physical location from which the activity is carried out.

The Act **DOES NOT** apply to:

- (a) a person only by reason of that person acting in a professional capacity on behalf of persons engaged in procuring the organisation, promotion, issuance, sale or trade of virtual assets;
- (b) transactions or virtual assets in which a person grants a value as part of an affinity or rewards program, which value cannot be taken from or exchanged with the person for legal tender, bank credit or any virtual asset;

- (c) a digital representation of value issued by or on behalf of the publisher and used within an online game, game platform or game sold by the same publisher or offered on the same game platform;
- (d) non-fungible tokens; or
- (e) electronic representations of fiat currency, security or any other financial asset under the Bank of Botswana Act or Securities Act.

What is a Virtual Asset Service?

A virtual asset service means a service provided in relation to a virtual asset business or transaction and a virtual asset service provider means a person who under an agreement and as part of a business, undertakes a virtual asset service on behalf of another person.

Who is a Virtual Asset Service Provider (VASP)?

A Virtual Asset Service Provider (VASP) means a person who under an agreement, as part of a business, undertakes a virtual asset service on behalf of another person.

A VASP is a dealer or a person willing to deal, on own account, by buying and selling virtual assets at prices set by that person, and includes a;

- (a) market maker or liquidity provider,
- (b) system that provides virtual liquidity, allowing traders to buy and sell derivatives on the blockchain, or
- (c) virtual automated market maker.

Why was there a need to regulate Virtual Assets in Botswana?

- (a) **It is a Financial Action Task Force (FATF) Requirement:** Due to the decentralised nature (meaning they do not operate through regulated and supervised intermediaries) of virtual assets, they are viewed as presenting a money laundering threat and possible tax evasion, therefore, standard setting bodies such as FATF recommended that they be monitored.

- (b) **To ensure the stability of the local financial system:** The Authority's mandate is to safeguard and contribute to the stability of the local financial system, and in so doing, build and sustain the confidence of local and international stakeholders in the integrity of the industries within the local NBF sector.
- (c) **Consumer Protection:** The **Regulatory Authority**, through its market conduct regulation, consistently executes the obligation of consumer protection to ensure that customers are treated fairly, that their right to information is honoured, that the relevant information is duly disclosed by regulated entities, and that abusive business practices are thwarted.

It is vital for every licence holder to provide safeguards that monitor conduct which may amount to market abuse, such as money laundering. This is achieved through having business rules, procedures and an effective surveillance programme that ensure that a virtual asset business is conducted on or through its distributed ledger technology platform or a trading system that is conducted in an orderly manner to provide proper protection to customers.

How are cross border transactions regulated?

Virtual assets by nature are borderless, such transactions, therefore, dictate that they be regulated especially from the perspective of Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation (AML/CFT&P). This also calls for cooperation with other regulatory bodies in foreign jurisdictions.

What are the licensing requirements in order to be registered on NBFIRA's database for VASPs or an ITO?

Licensing Requirements include:

- (a) Company Requirements;
- (b) Controller Requirements;
- (c) Financial Intelligence Act Requirements;
- (d) Personnel Requirements;
- (e) Other Requirements;
- (f) Application fee.

The Licensing Requirements have been duly posted on the NBFIRA website: www.nbfira.org.bw under "Documents Library".

Following the lapse of the transition period, the **Regulatory Authority** issued a public notice to inform all operators of VASPs activities who have not applied for licensing, to cease and desist from operating.

The **Regulatory Authority** will take appropriate and proportional regulatory intervention against any VASPs who fail to comply.

Furthermore, the Virtual Assets Act stipulates that any person who carries out a virtual asset business in contravention of the Act commits an offence and is liable, where no specific penalty is provided, to a fine not exceeding P250,000, or imprisonment for a term not exceeding five years, or to both.





Remember...

a) Key Risks:

Always be mindful of the potential exposure to risks associated with virtual assets. These include:

- (i) **Limited knowledge:** virtual asset products can potentially expose unsuspecting members of the public to invest in scams.
- (ii) **Volatility:** it is common for the value of virtual assets, particularly Cryptos to quickly lose value by significant margins. Generally, the more volatile an asset is, the riskier it's considered to be as an investment.

b) Licensed Service Providers

All Virtual Asset Service Providers require a license. Those who were operating before the commencement of the Virtual Assets Act on February 25, 2022 and did not apply for a license before the end of the transitional period being May 31, 2022 are considered to be operating illegally.

Consumer Protection – How do I Lodge my complaint with NBFIRA?

The **Regulatory Authority** has a legal duty to protect consumers by promoting Fairness, Efficiency & Orderliness within the Virtual Assets industry. If you are unsatisfied with the nature and quality of service from a service provider within the Virtual Assets industry or are unable to amicably resolve a dispute, you may escalate your complaint to the Regulatory Authority through our Complaints Portal on our website www.nbfira.org.bw. Refer to our Complaints Procedure on guidelines on how to lodge a complaint.



NBFIRA Ethics Hotline

Have you observed or suspect fraudulent or unethical activities within the NBFIRA sector or the **Regulatory Authority**? Be part of the solution and make an anonymous report to:

Call on the Toll-Free Number: 16133
Email to: NBFIRA@tip-offs.com
Website: www.tipoffs.com
Postal address: P.O. Box 448, Gaborone

NBFIRA CONTACT DETAILS

For more information, contact us on:

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"NBFIRA... Working Towards Financial Stability"

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