



PRIVATE SECTOR CONSULTATION

Amendment to certain Regulatory Measures for applicability to Virtual Asset Service Providers and other Regulated Entities

August 2022

Private Sector Consultation
Amendment to certain Regulatory Measures for applicability to
Virtual Asset Service Providers and other Regulated Entities.

A. Introduction

1. Section 34(1)(a) of the Monetary Authority Act (2020 Revision) ("MAA") states that–

"After private sector consultation and consultation with the Minister charged with responsibility for Financial Services, the Authority may –

(a) issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees, and any other persons to whom and to the extent that the regulatory laws may apply".

2. Requirements specific to the private sector consultation are outlined in section 4(1) of the MAA as follows:

"When this Law requires private sector consultation in relation to a proposed measure–

(a) the Authority shall give to each private sector association a draft of the proposed measure, together with –

- i. an explanation of the purpose of the proposed measure;*
- ii. an explanation of the Authority's reasons for believing that the proposed measure is compatible with the Authority's functions and duties under section 6;*
- iii. an explanation of the extent to which a corresponding measure has been adopted in a country or territory outside the Islands;*
- iv. an estimate of any significant costs of the proposed measure, together with an analysis of the benefits that will arise if the proposed measure is adopted; and*
- v. notice that representations about the proposed measure may be made to the Authority within a period specified in the notice (not being less than thirty days or such shorter period as may be permitted by subsection (3)); and*

(b) before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations, and shall give a written response, which shall be copied to all the private sector associations."

3. The Cayman Islands Monetary Authority ("the Authority" or "CIMA") seeks consultation and comment from the private sector associations concerning the proposed amendments to the Statement of Guidance: Outsourcing Regulated Entities (**Appendix 1**), Rule – Cybersecurity for Regulated Entities (**Appendix 2**), Statement of Guidance- Cybersecurity for Regulated Entities (**Appendix 3**) and Statement of Guidance- Nature, Accessibility and Retention of Records (**Appendix 4**) ("the Regulatory Measures).

B. Background/ Scope of Application

4. In May 2020, the Virtual Asset (Service Providers) Act ("VASP Act") was enacted and certain provisions were commenced in October 2020.
5. The VASP Act, among other things, empowers the Authority to authorize and supervise virtual asset service providers ("VASPs").
6. In addition to specific Rules and Statements of Guidance that are being developed for VASPs, there are regulatory measures which generally apply to all entities that are authorized and/or supervised by the Authority and therefore are applicable to VASPs.
7. However, four measures have been identified as requiring amendment to appropriately apply to VASPs.
8. It should be noted that in addition to capturing VASPs, the proposed amendments are also intended to capture other regulated entities that may not have been previously included at the time of the original issuance of these measures, save for specifically identified exceptions that may be noted in a measure.
9. Regulated entities, for these purposes, are entities that are regulated and/or supervised by the Authority in accordance with the regulatory acts, as defined in the Monetary Authority Act.

C. Purpose of Proposed Measure and Consistency with Authority's Functions

10. Pursuant to section 6(1)(b) of the MAA, one of the principal functions of the Authority is:
 - "b) *regulatory functions, namely -*
 - (i) *to regulate and supervise financial services business carried on in or from within the Islands in accordance with this Law and the regulatory laws;*
 - (ii) *to monitor compliance with the money laundering regulations; and*
 - (iii) *to perform any other regulatory or supervisory duties that may be imposed on the Authority by any other law;"*
11. Section 6(3) of the MAA provides that in performing its regulatory functions, the Authority shall, *inter alia*:
 - i. *"endeavour to promote and enhance market confidence and the reputation of the Islands as a financial centre;*
 - ii. *recognise the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, vis a vis both consumers and suppliers of financial services, while conforming to internationally applied standards insofar as they are relevant and appropriate to the circumstances of the Islands;*
 - iii. *recognise the principle that a burden or restriction which is imposed on a person or activity should be proportionate to the benefits, considered in general terms; and*
 - iv. *recognise the need for transparency and fairness on the part of the Authority".*

- 12.** The VASP Act 2022 provides a framework for the conduct of virtual asset business in the Islands, the registration and licensing of persons providing virtual asset services by the Authority and for incidental and connected purposes.
- 13.** Sections 9, 10 and 11 of the VASP Act gives the Authority the power to impose requirements on a VASP as it considers necessary and in the best interests of clients; including in relation to cybersecurity and record maintenance.
- 14.** There are four key regulatory measures that require amendments to facilitate adequate supervision of VASPs and other regulated entities. Namely:
 - (1) Statement of Guidance: Outsourcing Regulated Entities
 - (2) Rule – Cybersecurity for Regulated Entities
 - (3) Statement of Guidance- Cybersecurity for Regulated Entities and
 - (4) Statement of Guidance- Nature, Accessibility and Retention of Records
- 15.** The current wording in the scope of application of each measure lists specific regulatory laws which do not include the VASP Act and may not have captured other regulated entities, as the same would not have been contemplated at the time these measures were issued.
- 16.** The proposed amendments for the Regulatory Measures involve replacing the list of regulatory laws, in the scope of application, with more general language that would accommodate applicability to any entity regulated and/or supervised by the Authority, save for any identified exceptions within a specific measure.
- 17.** The application of these four measures to regulated entities is consistent with best practices and prudent corporate oversight and the proposed amendments align with the regulatory function of the Authority at Sections 6(1) and 6(3) of the MAA.

D. International Standards

- 18.** Due to the nascent nature of the VA industry, there are currently no harmonised international standards for the prudential regulation and supervision of virtual assets service providers.

E. Jurisdictional Comparisons

- 19.** Several jurisdictions were reviewed in considering the key prudential matters applicable to VASPs. These were, the Bahamas, Bermuda, Estonia, Gibraltar, Hong Kong, Japan, Liechtenstein, Malta as well as the European Union (namely the proposed Markets in Crypto-assets Regulation).
- 20.** While the approaches to the supervision and regulation of VASPs vary significantly among the various jurisdictions, there are some key areas that most jurisdictions have covered as it relates to virtual asset activities. Namely, corporate governance, conduct of business, operational matters, prudential, risk management, reporting, internal controls, approval for changes in control, safeguarding of assets, and IT and cybersecurity.
- 21.** Most of these areas have already been covered in the *Rule on the Obligations for the provision of virtual asset services- Virtual Asset Custodians and Virtual Asset Trading Platforms* and the supporting *Statement of Guidance on the Obligations*

for the provision of virtual asset services- Virtual Asset Custodians and Virtual Asset Trading Platforms.

22. There are also standalone measures, that apply to all regulated entities under the purview of the Authority, which are materially comprehensive and will add effective support for the supervision of VASPs. These include the *Rule on Internal Controls-General for All Licensees*, the *Statement of Guidance - Corporate Governance* and *Regulatory Policy Criteria for Approving Changes in Ownership and Control*.

23. However, there are other measures, such as the measures on cybersecurity, retention of records and outsourcing which though necessary and appropriate for the supervision of VASPs and other regulated entities, are not applicable due to the wording in the scope of application. For this reason, the Authority proposes to amend these measures to include VASPs and other regulated entities.

24. The table below indicates jurisdictions that have implemented such requirements for VASPs.

Table 1: Summary of Jurisdictional Comparison on Key Requirements

Requirements	Jurisdictions								
	EU: MiCA	Bermuda	Bahamas	Estonia	Gibraltar	Hong Kong	Japan	Liechtenstein	Malta
Cybersecurity	√	√	x	x	√	x	x	√	√
Retention of Records/ Record Keeping	√	√	√	√	√	x	x	√	√
Outsourcing	√	√	x	√	√	x	x	√	√

25. Most jurisdictions identified above have in place requirements for cybersecurity, record retention and outsourcing as it relates to the regulation/supervision of VASPs. The inclusion of VASPs in the Authority’s regulatory measures on these areas are therefore consistent with this general approach.

F. Cost-Benefit Assessment of Implementing the Proposed Rule and SOG

26. Table 2 shows the estimated costs and benefits of amending the key Regulatory Measures to include VASPs.

Table 2 – Estimated Costs and Benefits of Regulatory Measures

	Costs	Benefits
CIMA	<ol style="list-style-type: none"> 1. Processing amendments to the Regulatory Measures and conducting consultation. 2. Conducting outreach to VASP sector to ensure applicability is understood. 	<ol style="list-style-type: none"> 1. The amendments to the Regulatory Measures will provide clarity and certainty on the expectations of Authority in its supervision of VASPs in

	3. .	<p>respect of these key requirements.</p> <p>2. Will provide support to the framework for the supervision regime for VASPs.</p> <p>3. Enhances the reputation of the Authority, as a regulator, having put in place appropriate measures to supervise the newly regulated VASP sector and shows consistency in the supervision of regulated entities.</p>
Cayman Islands	<p>1. It is not anticipated that there will be any costs to the jurisdiction as a whole.</p> <p>2. VASPs may choose not to operate in the Cayman Islands due to the comprehensiveness of the regulatory requirements.</p>	<p>1. Sets precedent for other jurisdictions as there are limited jurisdictions that have comprehensive measures for VASPs.</p> <p>2. Enhances the reputation of the jurisdiction, since there will be appropriate measures in place to guide the VASP sector and consequently will have a significant and positive impact on confidence in the Cayman Islands as a strong well-regulated financial centre.</p>
VASPs	<p>1. Possible compliance costs relating to implementation of key requirements, including ensuring systems and controls meet standards required by the Authority. However, these requirements have already been reflected in the Rule and SOG for VASP licensees, albeit in less detail. It is therefore unlikely that these amendments would add any additional costs.</p>	<p>1. Provides a clear framework within which to operate, in an otherwise previously unregulated space.</p> <p>2. Gain reputation for meeting regulatory standards.</p> <p>3. May result in reduced regulatory burdens in other jurisdictions of operation if Cayman Islands regime is deemed to be equivalent (ie. substituted compliance).</p>

G. Consultation Feedback and Comments

- 27.** Before proceeding with the proposed amended measures, the Authority shall have regard to any representations made by the private sector associations only. Feedback submitted by individuals, entities, or other bodies, unless acting

on behalf of private sector associations, will not be accepted by the Authority. Representations from private sector associations must be submitted as a consolidated document, and a listing of the entities which provided feedback should be included. Private sector associations should ensure that conflicting positions are resolved prior to submission to the Authority. Where positions conflict within or across associations, the Authority will consider all available information in taking a decision, which will be at its sole discretion.

- 28.** To ensure that all responses are given due consideration, it is important that private sector associations make clear reference to the sections of the measure being commented on, and that responses are unambiguous, clearly articulated and based on fact. The consultation process is not designed to address complaints or grievances. Feedback of this nature should be submitted through the established complaints process.
- 29.** In cases where the feedback proposes to change a policy position of the Authority or substantially amend any requirement of the measures, information to support the position of the association must be provided. The table below provides an example of the Authority’s expectation with regard to feedback for the proposed amended measures.

Reference	Example of a Helpful Comment	Examples of Comments needing more Support
Rule 4.2 ¹	<p>In Rule 4.2 the current text omits the fair value measurement of liabilities. Also, as defined it is not asymmetrical with the Market Price definition and thus scenarios exist that fall into neither category.</p> <p>Suggested wording: <i>Hard-to-Value Securities means an asset or liability for which there is no Market Price which is required to be measured at fair value pursuant to 5.2</i></p>	<ul style="list-style-type: none"> × This is not what is done in other jurisdictions. × I don’t think we should do this. × CIMA is not considering the position of the experts.

- 30.** All feedback submitted by private sector associations will be given due consideration. Nevertheless, the decision to adopt any feedback provided into the proposed amended measures will be at the sole discretion of the Authority.

¹ This example is not reflective of the content of the proposed measure.

H. Notice of Representations

- 31.** The Authority seeks consultation through written comments and representations from the private sector associations concerning the:

Amendment to certain Regulatory Measures for applicability to Virtual Asset Service Providers and other Regulated Entities.

- 32.** The Authority must receive representations by 1700hrs on **September 12, 2022**. Representations received after this deadline may not be considered and will not form part of the collated written response provided to private sector associations.

- 33.** Comments and representations must be addressed to:

The Managing Director
Cayman Islands Monetary Authority
P.O. Box 10052
SIX, Cricket Square
Grand Cayman KY1-1001
Cayman Islands
Tel: 345-949-7089
Fax: 345-946-5611
Email: consultation@cima.ky
and copied to KavitaMaharajAlexander@cima.ky.

- 34.** The Authority shall have due regard to any representation made by the private sector associations and industry stakeholders. The Authority shall provide a written response collating the feedback received and the Authority's position on this feedback. This response shall be copied to all relevant private sector associations only.



SIX, Cricket Square
PO Box 10052
Grand Cayman KY1 - 1001
CAYMAN ISLANDS

General Office: 345-949-7089

www.cima.ky