

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

VIRTUAL ASSETS BILL

(As read a First Time)

(Introduced by the Minister of Finance and Public Enterprises)

[B. 12 - 2023]

BILL

To provide for the licensing and regulation of virtual asset service providers; to designate a Regulatory Authority to regulate and supervise virtual asset service providers and related activities, for purposes of ensuring consumer protection, preventing market abuse and preventing or mitigating the risk of money laundering and financing of terrorism and proliferation activities posed by virtual assets markets; and to provide for incidental matters.

(Introduced by the Minister of Finance and Public Enterprises)

ARRANGEMENT OF SECTIONS

CHAPTER 1

PRELIMINARY PROVISIONS

1. Definitions
2. Application of Act
3. Declaring certain digital representations of value as virtual assets
4. Fit and proper person

CHAPTER 2

REGULATORY AUTHORITY

5. Designation of Regulatory Authority
6. Powers and functions of Regulatory Authority

CHAPTER 3

LICENSING OF VIRTUAL ASSET SERVICE PROVIDERS

Part 1

Licensing of virtual asset service providers

7. Licensing requirements
8. Application for licence
9. Determination of application
10. Register of licence holder

Part 2

Conduct of business and professional conduct

11. Registered office or place of business
12. Obligation to notify certain events
13. Professional conduct of licence holders

Part 3
Officers of licence holder

14. Officers of licence holder

Part 4
Prohibition on issuing and transfer of shares or interest

15. Prohibition on issuing and transfer of shares or interests

Part 5
Responsibilities of licence holder

16. Safekeeping and protection of client virtual assets
17. Prevention of market abuse
18. Transfer of virtual assets

Part 6
Financial obligations of licence holders

19. Financial requirements
20. Separate accounts
21. Audited financial statement

Part 7
Amendments relating to licence and business activities

22. Amendment relating to certain business activities
23. Amendment of conditions of licence

Part 8
Additional requirements relating to initial token offering

24. Prospectus
25. Offer period
26. Disclosure
27. Classification of virtual tokens
28. Advertisement of initial token offerings
29. Purchaser's right to rescission or damages
30. Purchaser's right of withdrawal

CHAPTER 4

**CANCELLATION OR SUSPENSION OF LICENCE
AND CEASING OF BUSINESS**

31. Cancellation or suspension of licence
32. Suspension of licence without notice
33. Ceasing of business by licence holder

CHAPTER 5

INSPECTION AND INVESTIGATION

34. Appointment of inspectors
35. Inspection of books
36. Investigation
37. Powers and functions of inspectors
38. Privilege and self-incrimination
39. Frequency of inspection
40. Use of investigative tools and information

CHAPTER 6

GENERAL PROVISIONS

41. Amendment of Schedules
42. Confidentiality
43. Cooperation with other entities
44. Directives
45. Administrative sanctions
46. Appeals
47. Appeal board
48. Exemptions
49. Delegation of powers and assignment of functions
50. General offences and penalties
51. Rules
52. Regulations
53. Guidelines
54. Savings and transitional provisions
55. Short title and commencement

Schedule 1	Class of license
Part 1 of Schedule 2	Virtual asset services
Part 2 of Schedule 2	Excluded services and activities

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

CHAPTER 1

PRELIMINARY PROVISIONS

Definitions

1. In this Act, unless the context indicates otherwise –

“appeal board” means an appeal board appointed in terms of section 47;

“auditor” means a person registered as an accountant and auditor under section 23 of the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951) and who has been admitted as a member of the Institute of Chartered Accountants of Namibia as provided for in section 29 of that Act;

“Bank” means the Bank of Namibia referred to in section 2 of the Bank of Namibia Act, 2020 (Act No. 1 of 2020);

“banking institution” means a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998);

“beneficial owner” means a beneficial owner as defined in section 1 of the Financial Intelligence Act;

“beneficiary” in relation to the transfer of virtual assets, means the person that will own the virtual asset on completion of a transfer;

“beneficiary virtual asset service provider” means the virtual asset service provider receiving the virtual asset on behalf of a client from the originating virtual asset service provider;

“books” includes any record, register, document or other record of information and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

“class of licence” means a class of licence specified in Schedule 1;

“client” means a person –

- (a) with whom the virtual asset service provider establishes or intends to establish business relations; or
- (b) for whom the virtual asset service provider undertakes or intends to undertake a transaction,

and the word “customer” has a corresponding meaning;

“company” means a company incorporated under the Companies Act, 2004 (Act No. 28 of 2004);

“competent authority” means a competent authority as defined in section 1 of the Financial Intelligence Act;

“comparable entity” means an entity outside Namibia which has functions similar to those of the Regulatory Authority with respect to the regulation and licensing of virtual asset service providers;

“customer due diligence” means customer due diligence as defined in section 1 of the Financial Intelligence Act;

“cyber-reporting event” means any act that results in unauthorised access to, disruption, or misuse of the electronic systems or information stored on such systems of a licence holder, including any breach of security leading to the loss, unlawful destruction or unauthorised disclosure of or access to such systems or information;

“day” means any day other than a Saturday, Sunday or a public holiday referred to in, or declared under, the Public Holidays Act, 1990 (Act No. 26 of 1990);

“distributed ledger technology” –

- (a) means a digital ledger in which data is recorded, consensually shared and synchronised across a network of multiple nodes or sites accessible by multiple persons; and
- (b) includes a distributed ledger technology platform or software program that operates on a blockchain or similar technology;

“distributed ledger technology platform” means an online mechanism for the sale, trade or exchange of virtual assets offered by a licence holder to its customers;

“fiat currency” means a banknote or coin that is in circulation as a medium of exchange in Namibia, including a digital currency issued by the Bank;

“Financial Intelligence Act” means the Financial Intelligence Act, 2012 (Act No. 13 of 2012);

“fit and proper person” means a person that complies with the requirements referred to in section 4;

“initial token offering” means to offer to the public for sale a virtual token in exchange for fiat currency or another virtual asset;

“inspector” means a person appointed as an inspector under section 34;

“investigating authority” means an investigatory authority as defined in section 1 of the Financial Intelligence Act;

“licence” means a licence issued in terms of section 9;

“licence holder” means a virtual asset service provider to whom a licence is issued in terms of section 9;

“Minister” means the Minister responsible for finance;

“officer” means a director of a board, chief executive officer, managing director, manager, partner, trustee, company secretary, compliance officer or other individual holding a similar position or performing a similar function or purporting to act in such capacity;

“originator” in relation to a transfer of a virtual asset, means –

- (a) the person that places an order with a licence holder for the transfer of virtual assets; or
- (b) where the transfer is carried out by a licence holder on behalf of a client or other third party, the client or third party who owned the virtual asset immediately before the transfer;

“originating virtual asset service provider” means the virtual asset service provider that on behalf of a client transfers a virtual asset to the beneficiary virtual asset service provider;

“person” means a natural person, a legal person or an entity;

“prospectus” means a document issued to the public by the company making the offer or sale of a virtual token, and that complies with the requirements of this Act;

“resident” means –

- (a) an individual resident in Namibia; or
- (b) a company, close corporation, partnership, trust or an entity incorporated or registered in Namibia;

“registered office” means a registered office referred to in section 178 of the Companies Act, 2004 (Act No. 28 of 2004);

“place of business” means the physical office used by or to be used by the virtual asset service provider in carrying out its business activities;

“Regulatory Authority” means an entity designated by the Minister as a Regulatory Authority in terms of section 5;

“rules” means rules made by the Regulatory Authority in terms of section 51;

“supervisory authority” means the Financial Intelligence Centre;

“token issuer” means a company that by way of business operates as issuer of initial offering;

“this Act” includes the regulations, rules, notices and directives made or issued under it;

“transfer of virtual asset” means the transfer of a virtual asset from one virtual asset address or account to another virtual asset address or account;

“virtual asset” means a digital representation of value –

- (a) that can be digitally transferred, stored or traded;
- (b) that uses a distribution ledger technology or similar technology; and
- (c) that can be used for payment or investment purposes;

but does not include digital representations of fiat currencies, and securities or other financial assets regulated under the securities or financial assets law of Namibia;

“virtual asset exchange” means a trading platform in the distributed ledger technology for the sale, trade, transfer or exchange of a virtual asset for fiat currency or virtual asset;

“virtual asset services” means all or any of the activities specified in Part 1 of Schedule 2;

“virtual asset service provider” means a person that by way of business provides virtual asset services for or on behalf of another person;

“virtual token” means any cryptographically secured digital representation of one or more rights provided on a digital distribution ledger platform or similar platform and issued or to be issued by a token issuer.

Application of Act

2. (1) This Act applies to persons that by way of business provide virtual asset services referred to in Part 1 of Schedule 2, for or on behalf of another person.

(2) This Act does not apply to services or activities specified in Part 2 of Schedule 2.

(3) If there is a conflict between this Act and any other law in relation to a matter specifically dealt with in this Act, the provisions of this Act prevail.

Declaring certain digital representations of value as virtual assets

3. (1) The Minister may, after consultation with the Regulatory Authority, by notice in the *Gazette* declare digital representations of value to be virtual assets for the purpose of this Act, and must in the notice specify the provisions of the Act which apply in respect of those virtual assets.

(2) The Minister may, after consultation with the Regulatory Authority, by notice in the *Gazette* amend or cancel a notice published in terms of subsection (1).

Fit and proper person

4. (1) In determining whether a person is a fit and proper person for the purposes of this Act, the Regulatory Authority must have regard to, but is not limited to, the following -

- (a) the financial standing of the person;
- (b) the relevant education, qualifications and experience of the person;
- (c) the person’s ability to discharge the relevant functions properly, efficiently, honestly and fairly;
- (d) the person’s reputation, character, financial integrity and reliability; or
- (e) any other matter which relates to the fit and proper person requirement.

(2) The Regulatory Authority may issue guidelines relating to the fit and proper person requirements for virtual asset service providers, officers, beneficial owners, associates and other persons to whom this Act applies.

(3) The guidelines issued under subsection (2) must be published on the website of the Regulatory Authority and be made available to any person on request.

CHAPTER 2

REGULATORY AUTHORITY

Designation of Regulatory Authority

5. (1) The Minister must by notice in the *Gazette* designate one or more entities as the Regulatory Authority to exercise the powers and perform functions of the Regulatory Authority in terms of this Act or any other law.

(2) The Minister may amend or cancel a designation made under subsection (1), but before taking such action the Minister must in writing inform the Regulatory Authority of his or her intention to amend or cancel the designation and must afford the Regulatory Authority an opportunity to be heard.

- (3) The Minister must in the *Gazette* give notice of -
- (a) the name of the entity or entities designated as the Regulatory Authority in terms of subsection (1); and
 - (b) an amendment or cancellation made under subsection (2).

Powers and functions of Regulatory Authority

6. The Regulatory Authority has the following powers and functions:

- (a) to license virtual asset service providers;
- (b) to regulate, supervise and monitor activities relating to the provision of virtual asset services;
- (c) to appoint inspectors for purposes of inspections and investigations required by this Act;
- (d) to make rules;
- (e) to issue directives and take enforcement against licence holders and other persons;
- (f) to publish guidelines regarding the interpretation, application and enforcement of this Act;
- (g) to cooperate with the supervisory authority, competent authorities, investigating authorities and comparable bodies, on sharing and exchange of relevant information;
- (h) to promote investor education and other conditions that facilitate innovation and development of virtual assets;
- (i) to determine fees payable in terms of this Act;
- (j) to advise the Minister on all matters relating to virtual assets; and
- (k) to exercise powers and perform functions of the Regulatory Authority in terms of this Act or any other law.

CHAPTER 3

LICENSING OF VIRTUAL ASSET SERVICE PROVIDERS

Part 1

Licensing of virtual asset service providers

Licensing requirements

7. (1) A person may not operate as a virtual asset service provider, unless -

- (a) the person is a company incorporated in Namibia, or is an individual, close corporation, partnership, trust or an entity registered in Namibia;
- (b) the person has a registered office or place of business in Namibia;
- (c) in the case the person wishes to operate as a token issuer, the person is a company; and
- (d) a licence is issued to that person in terms of this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding N\$10 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Application for licence

8. (1) A -
- (a) person that wishes to operate as a virtual asset service provider; or
 - (b) company that wishes to operate as a token issuer,

must apply for a licence in the form and manner determined by the Regulatory Authority.

(2) The class of licence that may be applied for under subsection (1) is specified in Schedule 1.

(3) The application for a licence under subsection (1), must include the following particulars and documents:

- (a) the legal form and name of the business;
- (b) the class of licence applied for;
- (c) the certificate of incorporation in case of a company, and a partnership agreement, a trust deed or relevant registration documents in the case of other persons;
- (d) the address to which all communications and notices may be addressed and at which all process may be served;

- (e) the particulars relating to the registered office or place of business to be used for carrying on business activities;
- (f) the full name, residential address and mailing address of each of the officers and each of the beneficial owners of the applicant;
- (g) proof of registration as a virtual asset service provider in another country, in the case of such registration;
- (h) particulars relating to the technology systems to be used by the applicant for the transfer and storage of virtual assets and rendering services based on it;
- (i) information and documents to show that –
 - (i) in the case that the applicant is an individual, the individual is resident in Namibia;
 - (ii) in the case that the applicant is not an individual, the required number of officers of the applicant are resident in Namibia;
- (j) information and documents, to enable the Regulatory Authority to determine that the following are fit and proper persons –
 - (i) in the case that the applicant is an individual, the individual and his or her beneficial owners; and
 - (ii) in the case the applicant is a company, close corporation, partnership, trust or an entity, its beneficial owners, their associates and officers;
- (k) information showing that the applicant complies with financial requirements, where this is required in terms of this Act;
- (l) a business plan or feasibility study setting out, but is not limited to, the nature and scale of the business activities proposed to be carried out;
- (m) arrangements for the management of the business activities;
- (n) policies and measures to be adopted by the business to meet its obligations under this Act, the Financial Intelligence Act and other laws relating to anti-money laundering and combating financing of terrorism and proliferation;
- (o) particulars and information relating to customer due diligence;
- (p) any other statutory authorisation which the applicant is required to have for carrying on its business activities; and
- (q) an application fee as may be determined in the rules;

(4) On receiving an application under subsection (1), the Regulatory Authority may require the applicant to –

- (a) give such other information, documents or reports in connection with the application; and
- (b) have any information submitted in support of the application verified by the Regulatory Authority at the cost of the applicant.

(5) Despite the provisions of any other law –

- (a) a banking institution that wishes to operate as a virtual asset service provider may -
 - (i) apply for a class “R” licence or class “T” licence; or
 - (ii) apply through its subsidiary, for a class “M” licence, class “O” licence or class “S” licence; and
- (b) the holder of an authorisation issued under the Payment System Management Act, 2003 (Act No. 18 of 2003), and that wishes to operate as a virtual asset service provider may apply for a licence through its subsidiary.

(6) An applicant for a licence in terms of this section, may withdraw his or her or its application by giving written notice, including the reasons for withdrawing the application, to the Regulatory Authority at any time before the determination of the application.

Determination of application

9. (1) In determining an application for a licence made under section 8, the Regulatory Authority may also consider -

- (a) any international standard relating to virtual assets; and
- (b) any relevant information obtained from a competent authority or a comparable entity.

(2) The Regulatory Authority must consider an application for a licence made under section 8, and may -

- (a) grant the application, with or without imposing conditions and in writing issue to the applicant a licence to operate as a virtual assets service provider; or
- (b) refuse the application and in writing inform the applicant of its decision and reasons for its decision.

(3) The Regulatory Authority may not grant an application for a licence made under section 8, unless it is satisfied that –

- (a) the applicant is incorporated or registered in Namibia;

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- (b) the applicant has a registered office or place of business in Namibia;
 - (c) in the case that the applicant is an individual, the individual is resident in Namibia;
 - (d) in the case of an applicant is not an individual, the required number of officers are resident in Namibia;
 - (e) the applicant, his or her or its officers, beneficial owners and their associates are fit and proper persons as referred to section 8(3)(j);
 - (f) the applicant complies with financial requirements, where this is required in terms of this Act;
 - (g) the applicant has made adequate arrangements for proper supervision of everything done under the license so as to ensure compliance with this Act, the Financial Intelligence Act and other laws relating to anti-money laundering and combating financing of terrorism and proliferation;
 - (h) undue prejudice would not be caused or would not ensue to the Namibian financial services industry or any part of the industry, if the application is approved; and
 - (i) applicant has obtained any other relevant statutory authorisation which may be required for carrying on its business activities.
- (4) The Regulatory Authority must in the *Gazette* give notice of the names of licence holders including the type of licences issued.
- (5) The licence issued in terms of this section remains in force from the date of issue until such time that it is cancelled, or is suspended or amended under this Act and subject to the conditions of suspension or amendment.

Register of licence holder

10. (1) The Regulatory Authority must establish and maintain a register of licence holders and the register must contain all of the following information in respect of every licence holder -

- (a) the full name of the licence holder;
- (b) the class of licence issued and any conditions imposed on the licence;
- (c) the virtual asset services provided by the licence holder;
- (d) the registered office or place of business of the licence holder;
- (e) the date on which the licence was issued;
- (f) the expiry date of the licence, if any;
- (g) the full name and physical address of the principal contact person or persons; and

(h) any other relevant information which the Regulatory Authority considers necessary.

(2) The Regulatory Authority must on its website publish and regularly update the information referred to in subsection (1).

(3) The Regulatory Authority must ensure that the register referred to subsection (1) is open to the public for inspection during office hours and copies of the register must on request by any person be made available to that person.

Part 2

Conduct of business and professional conduct

Registered office or place of business

11. (1) A licence holder must have a registered office or place of business in Namibia.

(2) A licence holder must keep at its registered office or place of business books of all transactions in relation to the virtual asset services provided.

(3) A licence holder must notify the Regulatory Authority of any change in the registered office or place of business within seven days after the date of the change.

Obligation to notify certain events

12. (1) An officer of the licence holder must immediately give written notice to the Regulatory Authority where he or she has reason to believe that there is a likelihood of any of the following occurring or having occurred:

- (a) the licenced holder becoming insolvent;
- (b) a cyber-reporting event;
- (c) failure by the licence holder to comply with this Act;
- (d) involvement of the licence holder in any criminal proceedings, whether in Namibia or outside Namibia;
- (e) the licence holder ceasing to carry out the virtual asset business activities, in Namibia or outside Namibia; or
- (f) a material change to the business activities of the licence holder.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable upon conviction to a fine not exceeding N\$10 000 000 or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Professional conduct of licence holders

13. (1) A licence holder must, in carrying out a virtual asset service –

- (a) act honestly and fairly;

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- (b) act with due care, skill and diligence;
 - (c) observe and maintain a high standard of professional conduct;
 - (d) ensure that appropriate measures are put into place for the protection of customer's virtual assets; and
 - (e) have effective corporate governance arrangements consistent with this Act.
- (2) A licence holder must implement and maintain measures for preserving the confidentiality of information of customers.

Part 3 Officers of licence holder

Officers of licence holder

- 14.** (1) The officers of the licence holder must be fit and proper persons.
- (2) A licence holder who is an individual must be resident in Namibia.
- (3) The Regulatory Authority must in the rules determine the number and designation of officers of the licence holder who must be resident in Namibia.
- (4) Where there is a change in the particulars of an officer of a licence holder, the licence holder must, not later than 30 days after such change, give written notice of the change to the Regulatory Authority.
- (5) A licence holder must immediately give written notice to the Regulatory Authority of the termination of appointment of an officer, for any cause whatsoever, and must provide particulars of such termination as the Regulatory Authority may require.
- (6) A licence holder who contravenes or fails to comply with subsection (2), (4) or (5) commits an offence and is liable upon conviction to a fine not exceeding N\$ 10 000 000 or, to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Part 4 Prohibition on issuing or transfer of shares or interest

Prohibition on issuing and transfer of shares or interests

- 15.** (1) A licence holder may not issue or transfer shares, legal interest or beneficial interest in the licence holder without the prior written approval of the Regulatory Authority.
- (2) Subsection (1) does not apply to the issue or transfer of shares, legal interest or beneficial interest of less than five per cent in the licence holder unless such transfer results in –
- (a) transferee holding more than 25 per cent of the shares, legal interest or beneficial interest; or

(b) a change in the effective control in the licence holder.

(3) The licence holder must give written notice to the Regulatory Authority, where it has issued or transferred shares, legal interest or beneficial interest of less than five per cent in the licence holder.

(4) An application for the issuing or transfer of shares, legal interest or beneficial interest in the licence holder must be made in the form and manner determined by the Regulatory Authority, and be accompanied by -

(a) such information and documents as the Regulatory Authority may require; and

(b) an application fee as may be determined in the rules.

(5) The Regulatory Authority may -

(a) grant the application made under subsection (4), with or without imposing conditions and in writing issue the approval to the applicant; or

(b) refuse the application and in writing inform the applicant of its decision and the reasons for its decision.

(6) The Regulatory Authority may grant an application made under subsection (4) if the Authority is satisfied that -

(a) having regard to the likely influence of the transferee, the licence holder will or will continue to conduct its business prudently and comply with this Act and the laws relating to anti-money laundering and combating of terrorism financing and proliferation

(b) the transferee is a fit and proper person to hold 25 per cent of the shares, legal interest or beneficial interest in the licence holder; and

(c) it is in the public interest to do so.

(7) A licence holder who contravenes or fails to comply with subsection (1) or (3) commits an offence and is liable upon conviction to a fine not exceeding N\$10 000 000 or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Part 5

Responsibilities of licence holder

Safekeeping and protection of client virtual assets

16. (1) A licence holder that is responsible for safekeeping of one or more virtual assets for one or more clients must maintain, in its safekeeping a sufficient amount of each type of virtual asset in order to meet its obligations to clients.

- (2) The virtual assets referred to in subsection (1) -
 - (a) must be held by the licence holder on behalf of the client entitled to the virtual asset;
 - (b) are not the property or virtual asset of the licence holder; and
 - (c) are not subject to the claims of creditors of the licence holder.

Prevention of market abuse

17. (1) A licence holder must ensure that its systems and controls are adequate and appropriate for the scale and nature of the activities relating to the virtual asset services, and that such systems and controls adequately and appropriately address –

- (a) the recording, storing, protecting and transmission of information;
- (b) the effecting and monitoring of transactions;
- (c) the operation of the measures taken for securing the timely discharge, whether by performance, compromise or otherwise, of the rights and liabilities of the parties to transactions;
- (d) the safeguarding and administration of virtual assets belonging to the customers; and
- (e) business continuity and planning, in the event of a disruption of a virtual asset service.

(2) A licence holder that holds a Class “S” licence must ensure that the systems and controls, in respect to its virtual asset exchange, at least cover the following:

- (a) identification and detection of suspicious price spikes or anomalies;
 - (b) prevention and monitoring of abusive trading strategies; and
 - (c) immediate steps for the restriction or suspension of trading upon discovery of market manipulative or abusive trading activities, including temporarily freezing of accounts.
- (3) A licence holder that holds a Class “S” licence must -
- (a) as soon as practicable, give written notice to the Regulatory Authority where it becomes aware of any market manipulative or abusive trading activities on its virtual asset exchange; and
 - (b) implement appropriate remedial measures and provide the Regulatory Authority with such additional assistance as the Regulatory Authority may require.

(4) A licence holder who contravenes or fails to comply with subsection (1) or (2) or (3) commits an offence and is liable upon conviction to a fine not exceeding N\$10 000 000 or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Transfer of virtual assets

18. (1) In this section “accurate” means information that has been verified by the Regulatory Authority for accuracy.

(2) An originating virtual asset service provider may not execute a transfer of virtual asset unless such transfer is accompanied by the required information determined in terms of this section and the rules.

(3) Where a transfer of virtual asset is made –

(a) the originator must -

(i) obtain and hold required and accurate originator information and required beneficiary information on the transfer; and

(ii) immediately and securely submit the information obtained and held pursuant to subparagraph (i) to the beneficiary; and

(b) the beneficiary virtual asset service provider must obtain and hold required originator information and required and accurate information on the transfer.

(4) The information obtained and held pursuant to subsection (3) must be kept in a manner that the information is immediately made available to the Regulatory Authority.

(5) The Regulatory Authority may in the rules determine the required information for purposes of this section.

(6) A person who contravenes or fails to comply with subsection (2), (3) or (4) commits an offence and is liable upon conviction to a fine not exceeding N\$10 000 000 or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Part 6

Financial obligations of licence holders

Financial requirements

19. The Regulatory Authority may in the *Gazette*, specify –

(a) the licence holders who must maintain the minimum unimpaired capital and such other financial requirements; and

(b) the minimum unimpaired capital and financial requirements referred to in paragraph (a), to be maintained by the licence holders contemplated in that paragraph.

Separate accounts

20. A licence holder that holds virtual assets of clients must keep the accounts in respect of the virtual assets service separate from any other accounts.

Audited financial statement

21. (1) For the purposes of this section, “financial year” means in respect of –

- (a) the licence holder’s first financial year, a period not exceeding 18 months from the date of incorporation or issue of a licence; and
- (b) every subsequent financial year, a period not exceeding 12 months.

(2) A licence holder must within four months after the end of each financial year, file with the Regulatory Authority audited financial statement in respect of all transactions and balances relating to its virtual asset service.

(3) A licence holder may in writing apply for an extension of the period referred to in subsection (2) and the Regulatory Authority may -

- (a) on good cause shown grant the application, with or without imposing conditions and in writing inform the licence holder of the approval; or
- (b) refuse the application and in writing inform the licence holder of its decision including the reasons for its decision.

(4) Despite the provisions of any other law, the audited financial statement to be filed with the Regulatory Authority under subsection (2) must be –

- (a) prepared in accordance with such accounting standards as the Regulatory Authority may approve and; and in writing communicate to the licence holder;
- (b) be audited by an auditor who must perform the audit in accordance with International Standards on Auditing or such other auditing standards as the Regulatory Authority may approve in writing communicate to the licence holder.

(5) A licence holder must keep a copy of the most recent audited financial statement, together with a copy of the auditor’s report financial statement for a period of five years from the date of its filing under subsection (2).

(6) A licence holder who contravenes or fails to comply with subsection (2) or (4) commits an offence and is liable upon conviction to a fine not exceeding N\$10 000 000 or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Part 7
Amendments relating to licence and business activities

Amendments relating to certain business activities

22. (1) A licence holder may not, without the prior written approval of the Regulatory Authority –

- (a) expand the scope of its business activities;
- (b) issue new virtual tokens;
- (c) merge with another entity;
- (d) appoint an officer;
- (e) add or reduce its shareholders; or
- (f) change or modify its name.

(2) Unless a different procedure is prescribed under this Act, a licence holder that wishes to carry out any of the activities listed in subsection (1) must apply to the Regulatory Authority in the form and manner determined by the Regulatory Authority and the application must be accompanied by such information as the Regulatory Authority may require and such fees as may be determined in terms of the rules.

(3) The Regulatory Authority must consider an application made under subsection (2) and may -

- (a) grant the application with or without imposing conditions and in writing issue the approval to the applicant; or
- (b) refuse the application and in writing inform the applicant of its decision and the reasons for its decision.

(4) Where the Regulatory Authority grants an application in terms of this section, the Regulatory Authority must notify the supervisory authority.

(5) A person who contravenes or fails to comply with subsection (1), commits an offence and is liable upon conviction to a fine not exceeding N\$ 10 000 000 or imprisonment for a period not exceeding 10 years, or to both such a fine and such imprisonment.

Amendment of conditions of licence

23. (1) The Regulatory Authority may on its own initiative or on application by a licence holder amend a condition of a licence.

(2) An application for amendment of a condition of licence must be made in the form and manner determined by the Regulatory Authority and be accompanied by such information and fees as may be determined by the Regulatory Authority in the rules.

(3) The Regulatory Authority must consider an application for amendment made under subsection (2) and may -

- (a) grant the application with or without imposing conditions and in writing issue the approval to the applicant; or
- (b) refuse the application and in writing inform the applicant of its decision and the reasons for its decision.

(4) If the Regulatory Authority intends to amend a condition of a licence under subsection (1) at its own initiative it must in writing notify the licence holder of its proposal.

(5) The notice in terms of subsection (4), must -

- (a) specify the proposed amendment and the reasons for the proposed amendment; and
- (b) inform the licence holder that the licence holder may within the specified time make written representations to the Regulatory Authority showing why the Regulatory Authority should not make the amendment.

(6) The Regulatory Authority must in writing notify the licence holder of the amendment of the condition of licence made at the initiative of the Regulatory Authority.

(7) The Regulatory Authority must in writing inform the supervisory authority of an amendment made in terms of this section.

Part 8

Additional requirements relating to initial token offering

Prospectus

24. (1) A licence holder that is a token issuer may not make an initial token offering unless it has drawn up, notified and published a prospectus in accordance with this Act.

(2) A licence holder that is a token issuer must publish its prospectus by posting a copy on a website operated and maintained by it, or by a third party for and on its behalf, and the prospectus must be readily accessible to, and downloadable by, potential purchasers of the virtual token for the duration of the offer period and for not less than 15 days after the offer period ends.

(3) A licence holder that is a token issuer must, in its prospectus, provide full and accurate disclosure of information which would allow potential purchasers to make an informed decision.

(4) The prospectus required to be published pursuant to subsection (2) must –

- (a) be signed by every member of the board of the licence holder that is a token issuer; and
- (b) include information and documentation as determined in the rules.

(5) The Regulatory Authority may in writing issue directives to licence holders who are token issuers to amend their prospectus to include supplementary information required by the Regulatory Authority and communicated to the token issuers.

(6) A person who contravenes fails to comply with subsection (2), commits an offence and is liable upon conviction to a fine not exceeding N\$ 10 000 000 or imprisonment for a period not exceeding 10 years, or to both such a fine and such imprisonment.

Offer period

25. (1) A licence holder that is a token issuer must distribute a virtual token offered only during the offer period specified in the prospectus.

(2) For the purpose of subsection (1), an offer period may not exceed six months, but where the offer period exceeds six months, the Regulatory Authority may in terms of this Act take any appropriate action.

Disclosure

26. (1) Where, after a licence holder that is a token issuer has published its prospectus but before the close of the offer period, it becomes aware of any information which could affect the interests of purchasers, the token issuer must immediately give written notice to the Regulatory Authority and disclose that information by amendment to the prospectus.

(2) A licence holder that is a token issuer who fails to give written notice to the Regulatory Authority or make a disclosure pursuant to subsection (1), commits an offence and is liable upon conviction to a fine not exceeding N\$ 10 000 000 or imprisonment for a period not exceeding 10 years, or to both such a fine and such imprisonment.

Classification of virtual tokens

27. (1) For the purpose of section, a licence holder that is a token issuer must identify the class or classes of virtual tokens which are available for subscription in its prospectus.

(2) A licence holder that is a token issuer may not amend the class or classes of virtual tokens to be offered except with the prior written approval of the Regulatory Authority.

(3) A licence holder that is a token issuer, and that wishes to amend the class of virtual tokens in terms of subsection (2), may apply in the form and manner determined by the Regulatory Authority.

(4) The Regulatory Authority may -

(a) grant the application for amendment of class of virtual tokens under subsection (2), with or without imposing conditions and in writing issue the approval to the applicant;

- (b) refuse the application for amendment under subsection (2) and in writing inform the applicant of its decision and the reasons for its decision.

(5) Where the Regulatory Authority grants an amendment of a class or classes of virtual tokens in terms of this section the licence holder that is a token issuer must amend and publish its amended prospectus.

(6) A person who contravenes or fails to comply with subsection (2) commits an offence and is liable upon conviction to a fine not exceeding N\$ 10 000 000 or imprisonment for a period not exceeding 10 years, or to both such a fine and such imprisonment.

Advertisement of initial token offerings

28. (1) A licence holder that is a token issuer must ensure that any advertisement relating to initial token offerings is –

- (a) accurate and not misleading;
- (b) clearly identifiable as an advertisement;
- (c) consistent with the information contained in the prospectus; and
- (d) compliant with any criteria determined by the Regulatory Authority under subsection (2).

(2) The Regulatory Authority may in the rules determine criteria relating to the publication, form and content of advertisements relating to initial token offerings.

(3) Criteria set by the Regulatory Authority in terms of subsection (2) may –

- (a) prohibit the publication of advertisements of any description, whether by reference to their contents, to the persons by whom they are published or otherwise; or
- (b) make provision as to the matters which should or should not be included in such advertisements.

(4) Where it appears to the Regulatory Authority that an advertisement relating to initial token offering –

- (a) does not comply with criteria determined in the rules; or
- (b) is false, inaccurate or misleading,

the Regulatory Authority may issue such directives as it may consider appropriate in the circumstances to the persons who have published or caused the advertisement to be published.

- (5) A directive under subsection (4) may –
- (a) require a person to amend, in whole or in part, the advertisement;
 - (b) require the publication of the advertisement to be removed.

(6) This section is without prejudice to any remedy that an aggrieved person may have against a person who published or caused to be published an advertisement contrary to the requirements in criteria set by the Regulatory Authority made under this section, or which is false or misleading.

(7) The Regulatory Authority must on its website and in at least one newspaper circulating widely in Namibia publish a notice advising the public of any action the Regulatory Authority has taken pursuant to this section.

Purchaser's right to rescission or damages

29. Where a licence holder that is a token issuer publishes its prospectus, or any amendment to its prospectus, which contains a material misrepresentation relating to any matters determined in the rules, a purchaser has a right of action against the token issuer for –

- (a) the rescission of the subscription; or
- (b) damages.

Purchaser's right of withdrawal

30. (1) A purchaser of a virtual token may withdraw the purchase of virtual tokens by giving written notice to the licence holder that is a token issuer.

(2) A purchaser's notice of withdrawal in terms of subsection (1) must be made within 72 hours after the date of the agreement to purchase the virtual token.

(3) Where a purchaser of a virtual token has exercised the right of withdrawal in terms of subsection (1), the licence holder that is a token issuer must pay over to the purchaser all funds paid by the purchaser, within five working days from the date of the purchaser's request.

CHAPTER 4

CANCELLATION OR SUSPENSION OF LICENCE AND CEASING OF BUSINESS

Cancellation or suspension of licence

31. (1) The Regulatory Authority may cancel or suspend a licence if the Regulatory Authority is satisfied on reasonable grounds that any of the following circumstances exist:

- (a) the licence holder has contravened, or continues to contravene a provision of this Act, or has failed, or continues to fail to comply with a condition imposed or a directive, regulation or rule or notice made or issued under this Act;

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- (b) the licence holder has not commenced with the virtual asset service within 12 months after the date on which the licence was granted;
 - (c) the license holder has provided to the Regulatory Authority any information or document required under this Act that is false or misleading;
 - (d) any of the following are not fit and proper persons:
 - (i) the licence holder, its officers and associates; or
 - (ii) any person who is a beneficial owner of the licence holder;
 - (e) the licence holder has contravened or is contravening the obligations imposed on the licence holder under the Financial Intelligence Act and laws relating to anti-money laundering and combating of terrorism financing and proliferation;
 - (f) in a case where the licence holder is a company or close corporation, it is wound up;
 - (g) in a case where the licence holder is a partnership, the partnership is dissolved;
 - (h) in a case where the licence holder is a trust, the trust is deregistered under the trust laws of Namibia;
 - (i) in a case where licence holder is no longer incorporated or registered in Namibia to conduct its business or does not have a registered office or place of business in Namibia; or
 - (j) in the case where the licence holder is registered to carry on business as a virtual asset service in another country, and the comparable entity has terminated the authority of the person to carry on such business activity in that country.

(2) If the Regulatory Authority proposes to cancel or suspend a licence in terms of this section the Regulatory Authority must in writing inform the licence holder of the proposal for suspension or cancellation.

- (3) The notice referred to in subsection (2) must -
 - (a) specify the grounds on which the Regulatory Authority proposes to cancel the licence and
 - (b) specify the period of proposed suspension, in the case of a suspension;
 - (c) inform the licence holder that the licence holder may, within the specified period make written representations to the Regulatory Authority showing why the Regulatory Authority should not cancel or suspend the licence.

(4) The Regulatory Authority may cancel or suspend the licence only after having considered any representations made by the licence holder in accordance with subsection (3).

(5) Immediately after the cancellation or suspension of a licence under this section, the Regulatory Authority must in writing inform licence holder of the cancellation or suspension including the reasons for the cancellation or suspension.

(6) Where the Regulatory Authority cancels or suspends a licence in terms of this section, the Regulatory Authority -

- (a) must in writing notify the supervisory authority;
- (b) must in writing notify the competent authority and comparable entities; and
- (c) must in the *Gazette* and in any other appropriate manner notify the public.

Suspension of licence without notice

32. (1) The Regulatory Authority may, pending an investigation in terms of this Act, temporarily suspend a licence without giving the licence holder an opportunity to be heard, where the Regulatory Authority considers that an immediate suspension is necessary to protect the public or financial service industry or a part of the financial service industry.

(2) The Regulatory Authority must as soon as is practicable, in writing notify the licence holder of its decision made in terms of subsection (1) and the reasons for the decision.

(3) Where the Regulatory Authority suspends a licence in terms of this section, the Regulatory Authority must in writing notify the -

- (a) the supervisory authority;
- (b) the competent authority and comparable entities of the cancellation or suspension; and
- (c) must in the *Gazette* and in any other appropriate manner notify the public of the suspension.

Ceasing of business by licence holder

33. (1) A licence holder may in such form and manner determined by the Regulatory Authority notify the Regulatory Authority of the intention to cease activities or operations as a licence holder.

(2) Within seven days from the date of giving notice under subsection (1), the licence holder must submit a plan to the Regulatory Authority setting out the steps the licence holder will follow to cease the activities or operations.

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- (3) The plan referred to in subsection (2) must state –
- (a) the full names and physical address of the person who will manage the licence holder’s cessation of activities or operations;
 - (b) the period required to cease the activities or operations;
 - (c) the manner in which customer files or accounts will be closed and secured;
 - (d) customer notification procedures; or
 - (e) customer transfer procedures, if applicable.
- (4) The Regulatory Authority must, on receiving the plan under subsection (2), supervise and monitor the execution of the plan.
- (5) The Regulatory Authority may, in the public interest and for purposes of this section, in writing give directions to the licence holder and the licence holder must comply with such directions.

CHAPTER 5

INSPECTION AND INVESTIGATION

Appointment of inspectors

- 34.** (1) The Regulatory Authority may from among its employees appoint persons to be inspectors or may appoint other persons to be inspectors for the purposes of this Act.
- (2) An inspector -
- (a) has such powers, functions as may be provided for by this Act or as may be delegated or assigned to the inspector by the Regulatory Authority; and
 - (b) must exercise such powers, perform such functions in compliance with the directions or instructions as may be specified by the Regulatory Authority.
- (3) The Regulatory Authority must issue an identification card to every person appointed as an inspector in terms subsection (1).
- (4) The identification card referred to in subsection (3) -
- (a) must be signed by the official authorised by the Regulatory Authority to sign the identification cards; and
 - (b) is *prima facie* evidence of the appointment of the person concerned.

(5) An inspector must show his or her identification card to any person in relation to whom he or she may seek to exercise any power or perform any function or duty under this Act.

Inspection of books

35. (1) The Regulatory Authority may from time to time inspect and audit the books of any of the following persons to determine the extent of compliance with the requirements of this Act:

- (a) any person who is or was a licence holder; or
- (b) any person who is or was a virtual asset service provider without holding a licence required by this Act.

(2) For the purpose of an inspection in terms of subsection (1), the Regulatory Authority may instruct an inspector or may appoint an auditor to inspect and audit books of the licence holder or a virtual asset service provider.

(3) The licence holder, virtual asset service provider, its officers and its employees must give the Regulatory Authority full and free access to the books as may be reasonably required for an inspection or audit.

Investigation

36. The Regulatory Authority may from time to time instruct an inspector to conduct an investigation for any of the following purposes:

- (a) there are reasonable grounds to believe that an offence is committed or likely to be committed in terms of this Act;
- (b) to ensure compliance with this Act; or
- (c) to determine whether the licence holder is conducting business -
 - (i) in a manner not prejudicial to its customers;
 - (ii) in a manner not prejudicial to the soundness and stability of the financial system of Namibia or to the reputation of Namibia or which may threaten the integrity of the financial system.

Powers and functions of inspectors

37. (1) In so far as section 35, 36 and this section provides for a limitation on the fundamental rights contemplated in Sub-Article (1) of Article 13 of the Namibian Constitution, in that it authorises interference with the privacy of a person's home, correspondence or communication, that limitation is enacted upon the authority of Sub-Article (2) of that Article.

(2) A person who enters and searches any premises under section 35, 36 or this section must exercise those powers with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

(3) In carrying out an inspection or investigation in terms of this Act, an inspector may be accompanied and be assisted in the exercise of his or her powers by such other officials authorised by the Regulatory Authority or a member of the Namibian Police Force.

(4) In carrying out an inspection or investigation in terms of this Act and inspector may, subject to subsection (5), without a warrant or prior notice to the person under inspection or investigation -

- (a) enter any premises, other than premises that are a home or are being used as a home, occupied by the person under inspection or investigation and require the production of any book or thing relating to the person's business or affairs;
- (b) open any strong room, safe or other container in which the inspector, on reasonable grounds, suspects any book or thing relating to the business or affairs of the person under investigation or inspection is kept;
- (c) search the premises or any person on the premises if there are reasonable grounds for believing that the person has personal possession of any book or thing that has a bearing on the inspection or investigation;
- (d) use any computer system or technology system on the premises or require assistance of any person on the premises to use that computer system or technology system, to -
 - (i) search any data contained in or available to that computer system or technology;
 - (ii) reproduce any record from that data; and
 - (iii) seize any output from that computer system or technology system for examination and copying;
- (e) if the inspector is of the opinion that any book or thing relating to the business or affairs of the person under inspection or investigation contains information relevant to the investigation, examine, make extracts from and copy the book or thing;
- (f) against the issue of a receipt, remove any book or thing referred to in paragraph (e) temporarily for the purposes referred to in that subsection; or
- (g) if the inspector is of the opinion that any book or thing referred to in paragraph (e) contains evidence of an offence under this Act or any other law, against the issue of a receipt, seize such books or thing and retain it for so long as it may be required for any criminal or other relevant legal proceedings.

(5) In respect of premises or part of premises that are a home or are being used as a home, entry and search of the premises may be conducted –

- (a) only if authorised to do so by a warrant issued under subsection (6);

- (b) if there are reasonable grounds for the inspector to believe that -
 - (i) the delay in obtaining a warrant would prejudice the object of the inspection or investigation, or failure to act immediately may prejudice securing books or things for the Regulatory Authority;
 - (ii) a warrant will be issued under subsection (6) if the inspector or Regulatory Authority applies for such warrant; or
- (c) consent to entry and search has been given by -
 - (i) the person lawfully in control of any premises or lawfully in possession or having custody of books or thing; or
 - (ii) a person with the power to give such consent.

(6) A judge or magistrate in chambers having jurisdiction in the area where the premises in question are located may, on application by an inspector or the Regulatory Authority, issue a warrant referred to in subsection (5).

(7) A warrant may only be issued pursuant to subsection (6) if it appears from information given under oath or affirmation that there is reason to believe that one or more books or things relating to the business or affairs of the person under inspection or investigation is kept at the premises concerned.

(8) A person under inspection or investigation pursuant to this section or the authorised representative of such person may, during business hours, examine and make extracts from any book or thing under subsection (4)(f) or (g), under the supervision of an inspector.

(9) If it transpires during or after an investigation conducted under this section that a document or other item referred to in subsection (4)(f) or (g) has no relation to the business or affairs of the person under inspection or investigation or is patently of a private nature, the inspector may release such book or thing to its rightful owner.

Privilege and self-incrimination

38. (1) At any time during an inspection or investigation under this Act, the inspector or an officer authorised in writing by the Regulatory Authority, may summon any person who is believed to be able to furnish any information on the subject of the inspection or investigation, or to appear before the inspector at a specified time and place in order -

- (a) to be questioned; or
- (b) to deliver or produce such books or things.

(2) The inspector before whom a person appears in terms of subsection (1), may –

- (a) require that person to provide the information under oath or on affirmation; and
- (b) administer an oath to, or accept an affirmation from, that person.

(3) No self-incriminating answer given or statement made to a person exercising any power or function in terms of this Act is admissible as evidence against the person who gave the answer or made the statement in any criminal proceeding, except in criminal proceedings for perjury or in which the person is tried for an offence contemplated in this section and only to the extent that the question or answer is relevant to prove the offence charged.

(4) Any person who attends an investigation or inspection after having been summoned under this section is entitled to receive such compensation in respect of expenses incurred by him or her in connection with such attendance as he or she would be entitled to receive if he or she was a witness attending criminal proceedings before a magistrates court.

(5) A person commits an offence if the person, without reasonable cause –

- (a) after having been duly summoned in terms of this section, fails to -
 - (i) attend at the date, time and place specified in the summons; or
 - (ii) remain in attendance until excused by the person conducting the investigation or presiding at the enquiry; or
- (b) having been called upon to take an oath or make an affirmation in terms of this section, without sufficient cause -
 - (i) refuses to be sworn or to affirm as a witness; or
 - (ii) fails to answer fully and satisfactorily to the best of his or her knowledge all questions lawfully put to him or her or to produce any book or thing in his or her possession or custody or under his or her control which he or she has been required to produce; or
- (c) prevents another person from obeying a summons issued under this section or from giving evidence or producing a book or thing which he or she is required to give or produce,

and is liable on conviction to a fine not exceeding N\$ 10 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Frequency of inspection

39. (1) The Regulatory Authority must determine the frequency of an inspection or investigation conducted by the Regulatory Authority under this Act on the basis of, but not limited to –

- (a) the money laundering or financing of terrorism and proliferation activities risks and policies, internal controls and procedures associated with a licence holder as assessed by the Regulatory Authority;
- (b) the money laundering or financing of terrorism and proliferation activities risks present; or
- (c) the characteristics of a licence holder and the degree of discretion allowed to them under the risk-based approach implemented by the Regulatory Authority.

(2) The Regulatory Authority must review the assessment of the money laundering or financing of terrorism and proliferation activities profile of a licence holder as and when there are major developments in the management and operations of its business activities.

Use of investigative tools and information

40. (1) The Regulatory Authority, supervisory authority or any investigating authority may, in carrying out an inspection or investigation, supervision or other function under this Act make use of any appropriate tool or information, including –

- (a) distributed ledger analytics tools;
- (b) law enforcement and intelligence reports;
- (c) web-scraping or open-source information;
- (d) information obtained from international co-operation; or
- (e) any other reliable or reputable source of information.

(2) The Regulatory Authority, the supervisory authority and investigating authority may share, among each other, any information obtained under subsection (1) when reasonably required for the purpose of any criminal investigation, prosecution or legal proceedings.

(3) Despite the provisions of any other law, where, pursuant to subsection (1), the Regulatory Authority, supervisory authority or investigating authority obtains information that leads it to suspect that an offence has been, or is about to be, committed, it must immediately report the matter to any one of them.

CHAPTER 6

GENERAL PROVISIONS

Amendment of Schedules

41. (1) The Minister may after consultation with the Regulatory Authority, by notice in the *Gazette*, amend -

- (a) Schedule 1, by adding or deleting a class of licence;
- (b) Part 1 of Schedule 2, by adding or deleting a virtual asset service and adding particulars relating to such service; or

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- (c) Part 2 of Schedule 2, by adding or deleting services or activities which are not considered to be virtual asset services and adding particulars relating to such activities or services.
 - (2) In deciding whether to add or delete a virtual asset service or to exclude services or activities under paragraph (b) or (c) the Minister must take into account whether –
 - (a) such action is likely to impact negatively on public interest;
 - (b) undue prejudice would not be caused or would not ensue to the Namibian financial services industry or any part of the industry; and
 - (c) such action would not defeat the purpose of this Act.

Confidentiality

42. (1) An inspector, an auditor or an employee of the Regulatory Authority or any other person may not disclose to any person information relating to the affairs of the Regulatory Authority or of any other person, acquired in the performance of functions or the exercise of powers under this Act, except -

- (a) for the purpose of the exercise of powers or the performance of duties under this Act, or
- (b) when required to disclose that information before a court or under any law.

(2) The obligation of an inspector, auditor, employee or person under subsection (1) continues after the termination or cessation of the employment or appointment of such person.

(3) A person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding N\$ 10 000 000 or imprisonment for a period not exceeding 10 years, or to both such a fine and such imprisonment.

Cooperation with other entities

- 43.** (1) The Regulatory Authority may –
- (a) enter into an arrangement or agreement with an entity in Namibia; or
 - (b) with the approval of the Minister, enter into an arrangement or agreement with an entity outside Namibia,

that performs functions that are similar to those of the Regulatory Authority, that has objects that are similar to those of the Regulatory Authority or that performs functions related to the regulation, supervision and investigation relating to virtual asset service providers.

(2) An arrangement or agreement referred to in subsection (1) may provide for -

- (a) the sharing of information between the Authority and the institution or organisation relating to entities that fall under their respective jurisdictions or on any matter that falls within the ambit of the functions or powers of the respective parties;
- (b) the confidentiality relating to information referred to in paragraphs (a); and
- (c) any other matter which the parties may consider of importance relating to virtual assets.

Directives

44. (1) The Regulatory Authority may issue directives to a licence holder or to any other person to whom this Act applies with respect to any matter governed by this Act where the Regulatory Authority is of the opinion that the licence holder or other person is contravening or failing to comply with, or has contravened or failed to comply with, any provisions of this Act, or if -

- (a) an act or course of action has been or is about to be undertaken; or
- (b) an omission has occurred or is about to occur, on the part of the licence holder or other person,

that may be damaging to the financial soundness or reputation of that licence holder or other person or to its clients or to the financial stability of the financial system of Namibia or that is against the public interest.

(2) For the purposes of this section, the Regulatory Authority may issue a directive requiring the licence holder or other person to -

- (a) provide the Regulatory Authority with any information or books or things in the possession or under the control of that person within the period specified in the directive; or
- (b) appear before the Regulatory Authority or questioning by Regulatory Authority at a time and place specified in the notice.

(3) A licence holder or other person to whom a directive has been issued pursuant to this Act must comply with that directive despite anything to the contrary in its memorandum, articles or rules or other founding documents, and despite any contract or arrangement to which it is a party.

(4) Without derogating from the generality of subsection (1), the Regulatory Authority may issue a directive to a licence holder or other person with respect to the manner in which its affairs are to be conducted if it appears to the Regulatory Authority that the -

- (a) licence holder has contravened this Act in a manner that is likely to affect its financial stability or to prejudice the interests of its clients;

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- (b) licence holder or person is conducting its affairs in an improper, reckless or financially unsound manner;
 - (c) licence holder or other person is involved in a financial crime; or
 - (d) directive is necessary to protect the interests of clients of the licence holder or another person.
- (5) Without derogating from the generality of subsection (1), a directive may require the licence holder or other person to –
- (a) comply with the whole or a specified part of this Act;
 - (b) prevent an officer, beneficial owner, associate or employee of the licence holder or other person from taking part in the management or the carrying on of the business of the licence holder, except as permitted by the Regulatory Authority after giving the person concerned and the licence holder or person a reasonable opportunity to be heard;
 - (c) remove an officer or auditor of the licence holder after giving the officer or auditor concerned and the licence holder a reasonable opportunity to be heard;
 - (d) make arrangements to the satisfaction of Regulatory Authority for the discharge of all or any part of the obligations of the licence holder or other person under this Act; or
 - (e) take any other corrective action which Regulatory Authority considers necessary or desirable in the interests of the licence holder or other person, its clients or the financial system of Namibia.
- (6) A directive under paragraph (b) of subsection (5) may only be issued if Regulatory Authority is satisfied that the person referred to in that paragraph -
- (a) was knowingly involved in the commission of a crime in terms of this Act;
 - (b) acted recklessly or with intent to defraud creditors or clients of the licence holder or person; or
 - (c) is otherwise not fit and proper person.
- (7) A directive issued in terms of the Act must -
- (a) be in the form determined by the Regulatory Authority; and
 - (b) specify the time by which, or period during which, it must be complied with.
- (8) The Regulatory Authority may cancel a directive at any time by written notice to the licence holder or other person.

(9) A person who fails to comply with a directive issued under this Act commits an offence and is liable on conviction to a fine not exceeding N\$ 10 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Administrative sanctions

45. (1) The Regulatory Authority may impose an administrative sanction referred to in subsection (4) on licence holder or other person to whom this Act applies when satisfied on available facts and information that the licence holder -

- (a) has failed to comply with a provision of this Act, rule or regulation, directive or notice made or issued under this Act; or
- (b) has failed to comply with a condition of licence or an approval issued under this Act.

(2) Before imposing an administrative sanction referred to in subsection (4), the Regulatory Authority must give the licence holder or person reasonable notice in writing -

- (a) of the nature of the alleged non-compliance;
- (b) of the intention to impose an administrative sanction;
- (c) of the amount or particulars of the intended administrative sanction; and
- (d) advise the licence holder or a person that the licence holder may within a period specified in the notice, make representations as to why the administrative sanction should not be imposed.

(3) In determining an appropriate administrative sanction, the Regulatory Authority must consider the following factors -

- (a) the nature, duration, seriousness and extent of the relevant non-compliance;
- (b) whether the licence holder or a person has previously failed to comply with any law; and
- (c) any remedial steps taken by the licence holder or a person to prevent a recurrence of the non-compliance.

(4) After considering any representations and the factors referred to in subsection (3), the Regulatory Authority may -

- (a) give the licence holder or person a written warning;
- (b) give the licence holder or person a reprimand; or

-
- (c) issue a directive to the licence holder or person to undertake a specified act or to refrain from undertaking a specified act in order to -
 - (i) remedy the effects of the contravention and;
 - (ii) ensure that the licence holder or person does not commit any further contraventions of this Act;
 - (d) require the licence holder or person to establish compliance programmes, corrective advertising or changes in the management practices of the licence holder or person;
 - (e) subject to the other provisions of this Act, suspend the licence for a specified period, and subject to such conditions as may be determined by Regulatory Authority;
 - (f) subject to other provisions of this Act, cancel the licence; or
 - (g) impose a financial penalty not exceeding N\$10 000 000.
- (4) On imposing the administrative sanction the Regulatory Authority must in writing notify licence holder or person –
- (a) of the decision and the reasons for the decision;
 - (b) in the case of a financial penalty, of the amount payable as a penalty and any interest that may become payable and the interest rate, and the period within which the penalty must be paid; and
 - (c) of the right to appeal against the decision.
- (5) Any financial penalty imposed under subsection (3)(g) must be paid to Regulatory Authority.

Appeals

46. (1) A person who is aggrieved by any of the following decisions of the Regulatory Authority may appeal against that decision to the appeal board:

- (a) refusal to approve an application for a licence in terms of this Act;
- (b) refusal to approve any other application made in terms of this Act;
- (c) the decision to amend, suspend or cancel a licence or a decision to amend a condition of a licence in terms of this Act;
- (d) the decision to impose an administrative sanction; and
- (e) the decision to issue a directive;

(2) An appeal in terms of this section must be made within 30 days of receiving the decision of the Regulatory Authority.

(3) An appeal hearing takes place on the date, at the place and time determined by the appeal board and communicated in writing to the appellant.

(4) Unless otherwise prescribed, an appeal must be decided on the affidavits and supporting documents presented to the appeal board by the parties to the appeal.

(5) Despite the provisions of subsection (4) the appeal board may -

(a) summon any person who, in its opinion, may be able to give information for the purposes of deciding the appeal or who it believes has in his, her or its possession, custody or control any book or thing which has any bearing upon the decision under appeal, to appear before it on a date, time and place specified in the summons, to be questioned or to produce any relevant book or thing and retain for examination any book or thing so produced;

(b) administer an oath to or accept an affirmation from any person called as a witness at an appeal; and

(c) call any person present at the appeal proceedings as a witness and interrogate such person and require such person to produce any book or thing in his, her or its possession, custody or control.

(6) The chairperson of the appeal board may determine any other procedural matters relating to an appeal.

(7) An applicant or respondent to an appeal is entitled to be represented at an appeal by a legal practitioner or any person of his or her choice.

(8) The appeal board may -

(a) confirm, set aside or amend a decision of the Regulatory Authority; or

(b) refer a matter back for consideration or reconsideration by the Regulatory Authority in accordance with the directions of the appeal board.

(9) The decision of a majority of the members of the appeal board constitutes the decision of that Board.

(10) The decision of the appeal board must be in writing, and a copy of the decision must be made available to the appellant, the Regulatory Authority, supervisory authority and the Minister.

(11) If the appeal board sets aside any decision of the regulatory authority, the fees contemplated in subsection (2) paid by the appellant in respect of the appeal in question must be refunded to the appellant.

(12) If the appeal board amend any such decision, it may direct that the whole or any part of such fees be refunded to the appellant.

Appeal board

47. (1) Upon receiving a notice of appeal made under section 46, the Minister must appoint an appeal board to hear and decide the appeal.

- (2) The appeal board must consists of -
- (a) one person who has a qualification in law and with at least 10 years' relevant experience, who is the chairperson; and
 - (b) two other persons who have experience and extensive knowledge of virtual asset regulation and supervision.

(3) When the appeal board considers it necessary that the appeal board be assisted by a person or persons who have expert knowledge of a particular matter, the appeal board may appoint a person or persons to provide the appeal board with expert knowledge, but such person or persons does or do not have the right to participate in any decision of the Appeal Board.

(4) If before or during the consideration of any appeal it transpires that any member of the appeal board has any direct or indirect personal interest in the outcome of that appeal, the member must declare his or her interest and recuse himself or herself and must be replaced by another person.

(5) A member of the appeal board and an expert appointed in terms of subsection (3) may be paid such remuneration and allowances as the Minister may determine.

(6) The Regulatory Authority is responsible for the expenditure of and administrative support for the appeal board.

Exemptions

48. (1) The Minister may, after consultation with the Regulatory Authority, by notice in the *Gazette* exempt persons, category of persons, virtual asset services or activities from certain provisions of this Act.

(2) The Minister must deal with the exemptions that relate to virtual asset services or activities in terms of section 41.

(3) In deciding whether to exempt a person or an activity or service the Minister must take into account whether –

- (a) such action is likely to impact negatively on public interests;
- (b) undue prejudice would not be caused or would not ensue to the Namibian financial services industry or any part of the industry; and
- (c) such action would not defeat the purpose of this Act.

(4) The Minister may at any time amend or cancel an exemption made under subsection (1).

Delegation of powers and assignment of functions

49. (1) The Regulatory Authority may, subject to such conditions as it may determine, in writing delegate a power conferred upon or assign a function or duty entrusted to the Regulatory Authority under this Act, to the chief executive officer or a person holding a similar position in the Regulatory Authority.

(2) The Regulatory Authority may not under subsection (2), delegate or assign powers to impose administrative sanctions, grant exemptions, make or issue rules, notices, directives, or to issue, suspend, cancel or amend licences or other approvals under this Act.

(3) A delegation or assignment made under subsection (1) does not prevent the Regulatory Authority from exercising the power so delegated or performing the function or duty so assigned.

(4) Anything done or omitted to be done by an officer or employee of the Regulatory Authority in the exercise of any power delegated or the performance of any function or duty assigned to him or her under subsection (3) must be considered to have been done or omitted to have been done by the Regulatory Authority.

General offences and penalties

50. (1) A person commits an offence if the person –
- (a) makes any statement or gives any information required for the purposes of this Act which he knows to be materially false or misleading;
 - (b) knowingly fails to disclose any fact or information required to be disclosed for the purposes of this Act;
 - (c) obstructs an, or interferes with, inspector or auditor or any person in the exercise of his or her powers or performance of his or her functions in terms of this Act;
 - (d) fails to comply with an instruction or request made by the inspector, auditor or any person in terms of this Act; or
 - (e) with the intend to delay or obstruct an inspection or investigation in terms of this Act, destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any document, information relating to the business of the licence holder,

and is liable upon conviction to a fine not exceeding N\$ 10 000 000 or imprisonment for a period not exceeding five years, or to both such a fine and such imprisonment.

(2) A person who commits an offence under this Act for which no penalty is expressly provided is liable on conviction to a fine not exceeding N\$ 10 000 000 or imprisonment for a period not exceeding 10 years, or to both such a fine and such imprisonment.

Rules

- 51.** (1) The Regulatory Authority may make rules relating to –
- (a) any matter required or permitted to be determined by rules in terms of this Act;
 - (b) matters to be included in the prospectus to be published by the licence holder that is a token issuer;
 - (c) other information or documentation to be submitted in support of an application under this Act;
 - (d) information to held and submitted or to be held or submitted in respect of transfer of shares or interests, or the transfer of virtual assets;
 - (e) the acquisition or holding of shares, legal interest or beneficial ownership in the licence holder;
 - (f) the amendment, cancellation or suspension of a licence;
 - (g) standards to be maintained by the licence holder in the conduct of its business;
 - (h) the standards, policies and procedures for business management and continuity management;
 - (i) requirements relation to the audit of books of licence holders and other persons;
 - (j) service of documents for purposes of this Act;
 - (k) form and manner and period of paying financial penalties;
 - (l) fees payable for applications for, and issuing of a licence or other applications and approval, as well as any other services provided by the Regulatory Authority in terms of this Act;
 - (m) prudential standards in respect of –
 - (i) disclosure to clients;
 - (ii) risk management;
 - (iii) safekeeping of client virtual assets;
 - (iv) cybersecurity;
 - (v) financial reporting; and
 - (vi) statutory returns.

- (2) A rule made under subsection (1) may –
 - (a) be of general or specific application; and
 - (b) in respect of any contravention of a rule or failure to comply with a rule prescribe a penalty not exceeding a fine of N\$ 500 000 or imprisonment for a period not exceeding five years to both such a fine and such imprisonment.
- (3) Rules made by the Regulatory Authority must be published in the *Gazette*.

Regulations

52. (1) The Minister may after consultation with the Regulatory Authority, by notice in the *Gazette* make regulations relating to –

- (a) any matter which is by this Act required or permitted to be prescribed;
- (b) the fees payable in relation to appeals made in terms of this Act; and
- (c) the criteria that must be used or taken into consideration by the Regulatory Authority or any other person in determining what constitutes or amounts to “public interest” or “in the public interest” and “to protect the public” for purposes of this Act.

(2) Regulations made under subsection (1) may prescribe penalties in respect of a contravention of or a failure to comply with any provision of those regulations not exceeding a fine of N\$ 500 000 or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Guidelines

53. (1) The Regulatory Authority may issue guidelines in relation to -

- (a) the interpretation, operation and application of this Act or a provision of this Act; and
- (b) any matter relating to any of the Regulatory Authority’s powers and functions under this Act.

(2) The Regulatory Authority must on its website publish the guidelines and make it available to any person on request.

Savings and transitional provisions

54. (1) Where, on the commencement of this Act, a person is operating as a virtual asset service provider, the person must make an application in terms of this Act within three months after the date of commencement of this Act, to be issued with a licence to operate as a virtual asset service provider.

(2) The person referred to in subsection (1) may continue to carry out its business activities until his or her or its application for a licence is granted or refused in terms of this Act and such decision is communicated in writing to the person.

Short title and commencement

55. (1) This Act is called the Virtual Assets Act, 2023 and commences on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

SCHEDULE 1

CLASS OF LICENSE

CLASS OF LICENCE	VIRTUAL ASSET SERVICES (Part 1 of Schedule 2)
Token Issuer	Initial token offering
Class “M” Virtual Asset Broker-Dealer	<ol style="list-style-type: none"> 1. Exchanging virtual asset for fiat currencies or fiat currencies for virtual assets. 2. Exchanging, one virtual asset for another virtual asset.
Class “S” Virtual Asset Market Place	Virtual asset exchange
Class “O” Virtual Asset Wallet Services	Transfer of virtual assets
Class “R” Virtual Asset Custodian	<ol style="list-style-type: none"> 1. Safekeeping of virtual assets or instruments enabling control over virtual assets. 2. Administration of virtual assets or instruments enabling control over virtual assets.
Class “I” Virtual Asset Advisory Services	Participation in and provision of financial services related to a token issuer’s offer and sale of virtual assets or token issuers offer or sale of virtual asset.

SCHEDULE 2

PART 1

VIRTUAL ASSET SERVICES

Any one or more of the following activities or services are regarded as virtual asset services -

- (a) Initial token offering.
- (b) Exchanging one virtual asset for another virtual asset.
- (c) Exchanging virtual asset for fiat currencies or fiat currencies for virtual assets.
- (d) Transfer of virtual assets.
- (e) Operating a virtual asset exchange.
- (f) Safekeeping of virtual assets or instruments enabling control over virtual assets.
- (g) Administration of virtual assets or instruments enabling control over virtual assets.
- (h) Participation in and provision of financial services related to a token issuer's offer and sale of virtual assets or the token issuers offer or sale of virtual asset.

PART 2

EXCLUDED SERVICES AND ACTIVITIES

The following are not virtual asset services:

- (a) 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.
- (b) A person acting in a professional capacity on behalf of persons engaged in the provision or participation of financial services procuring the organisation, promotion, issuance, sale or trade of virtual assets.
- (c) Provision of the following ancillary services or products to a virtual asset service provider:
 - (i) supply of logistics and technical assistance services;
 - (ii) manufacture of hardware and engineering of software services;
 - (iii) network and telecommunication services;
 - (iv) information technology services in respect to the creation, encryption or digital transfer of virtual assets;

- (v) Services to hardware wallet manufacturers or non-custodial wallets;
or
 - (vi) validation, nodes operation and virtual mining services.
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