

## 提示简报

### New Legislative Regime for Virtual Asset Service Providers

#### 针对虚拟资产服务提供商的新法律

作者：Nicholas Pattman, Partner 合伙人 | Rob Humphries, Counsel 顾问律师

The Virtual Asset (Service Providers) Law, 2020 (the “Law”) was gazetted on 25 May 2020 and will come into force upon issue of a commencement order in due course. The Law represents Cayman’s first legal framework for the registration, licensing and supervision of virtual asset service providers conducting business in the Cayman Islands. This significant legislative development represents Cayman’s commitment to facilitating innovative virtual asset business whilst adopting international standards of regulation prescribed by the Financial Action Task Force.

#### What are virtual asset service providers?

Virtual asset service providers (VASPs) include companies, limited liability and foreign companies, and general, limited and exempted limited partnerships formed and, where required, registered or licensed, in accordance with the relevant laws of the Cayman Islands that provide virtual asset services as a business, or in the course of business, in or from within the Cayman Islands.

The Law defines “virtual assets” as digital representations of value that can be digitally traded or transferred and can be used for payment or investment purposes. Digital representations of fiat currencies or virtual service tokens are not included as virtual assets under the legislation. A “virtual asset service” is defined as the issuance of virtual assets or the business of providing one or more of the following services or operations for or on behalf of a natural or legal person or legal arrangement:

- (a) exchange between virtual assets and fiat currencies;
- (b) exchange between one or more other forms of convertible virtual assets;
- (c) transfer of virtual assets;
- (d) virtual asset custody services; or

《2020年虚拟资产（服务提供商）法》（以下简称“《虚拟资产法》”）于2020年5月25日在报上刊登，将在发布生效令后适时生效。《虚拟资产法》是开曼群岛针对在境内开展业务的虚拟资产服务提供商的登记、许可和监管制定的第一个法律框架。这项重大立法进展表明，开曼承诺在采用金融行动特别工作组规定的国际监管标准的同时促进创新虚拟资产业务。

#### 什么是虚拟资产服务提供商？

虚拟资产服务提供商（VASP）包括根据开曼群岛相关法律组建的及根据规定登记或许可的公司、有限责任公司和外国公司以及普通、有限和豁免有限合伙企业，其作为企业或在企业经营过程中在开曼群岛境内或从开曼群岛境内提供虚拟资产服务。

《虚拟资产法》将“虚拟资产”定义为价值的数字表达方式，可以进行数字化交易或转让，并可用于支付或投资目的。根据这项立法，法定货币或虚拟服务代币的数字表示不属于虚拟资产。“虚拟资产服务”定义为代理或代表自然人或法人或法律安排发行虚拟资产或提供以下一项或多项服务或经营：

- (a) 虚拟资产与法定货币之间的兑换；
- (b) 一种或多种其他形式的可转换虚拟资产之间的交换；
- (c) 虚拟资产转让；
- (d) 虚拟资产托管服务；或者

- (e) participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset.

### The licensing and registration regime

VASPs must be licensed, registered, operating under a waiver granted by the Cayman Islands Monetary Authority (CIMA), or have a sandbox licence in order to carry on business as a virtual asset service provider under the Law. The nature of operations and business the VASP conducts, or wishes to carry out, will determine how the VASP is supervised under the Law. Each of the separate legal requirements are discussed below.

#### Virtual asset service licences

A VASP must hold a virtual asset service licence (VASL) in order to provide virtual asset custodial services or operate a virtual asset trading platform, or if it currently provides or operates any of these services. In determining VASL applications, CIMA will consider whether (i) an approval is against the public interest; (ii) the applicant has adequate personnel with the necessary skills, knowledge and experience, facilities, books, records and accounting systems, and capital and cybersecurity measures with regard to its size, scope and complexity of business; and (iii) the applicant has complied with other requirements under the Law upon CIMA's request.

CIMA may impose regulatory requirements on a VASL as it considers necessary based on a number of factors including: (i) an assessment of the virtual asset service provided; (ii) the nature of supervision required; (iii) the safety and soundness of the public offering; and (iv) licences held under other regulatory laws. Restrictions or prohibitions on the use of certain technology or practices may also be imposed if they would disrupt or prejudice CIMA's functions, the interests of the public or the financial services in the Cayman Islands.

#### Registration

Where a license is not required, VASPs must register under the Law in order to carry on virtual asset services. Once registered, VASPs may only issue virtual assets directly to members of the public within a prescribed threshold and must submit an issuance request to CIMA in order to obtain its prior approval. CIMA determines such requests in accordance with certain considerations including the nature, function and purpose of the virtual asset and its likely effect on CIMA's functions as they relate to anti-money laundering, the financial services market and the public generally. A registered VASP may also engage a virtual asset trading platform licensed under the Law in order to issue newly created virtual assets over the prescribed threshold but must obtain CIMA's prior approval. Where a virtual asset issuance involves the transfer or exchange of other virtual assets or fiat currency, the VASP must maintain appropriate records for each

- (e) 参与及提供与发行虚拟资产或出售虚拟资产有关的金融服务。

### 许可和登记制度

VASP 必须获得许可证或进行登记或在开曼群岛金融管理局 (CIMA) 授予的豁免下经营或拥有沙盒许可证才能根据《虚拟资产法》作为虚拟资产服务提供商开展业务。VASP 从事或希望从事的运营和业务的性质将决定如何根据《虚拟资产法》对其进行监管。每个单项法律要求在下文中论述。

#### 虚拟资产服务许可证

VASP 必须持有虚拟资产服务许可证 (VASL) 才能提供虚拟资产托管服务或运行虚拟资产交易平台, 或者如果其目前已在提供或运营任何这些服务。在对 VASL 申请做出决定时, CIMA 将考虑 (i) 批准是否违反公共利益; (ii) 申请人是否拥有足够的具备必要技能、知识和经验的人员以及设施、账簿、记录和会计系统, 并且就其业务规模、范围和复杂性而言, 是否具备资本和网络安全措施; 以及 (iii) 申请人是否根据 CIMA 的要求遵守了《虚拟资产法》的其他要求。

CIMA 可能会基于多种因素对 VASL 施加其认为必要的监管要求, 这些因素包括: (i) 对提供的虚拟资产服务的评估; (ii) 所需监管的性质; (iii) 公募的安全性和健全性; 以及 (iv) 根据其他监管法持有的许可证。如果使用某些技术或采用某些做法会破坏或损害 CIMA 的职能、公众利益或开曼群岛的金融服务, 则也可能对其施加限制或禁止。

#### 登记

如果不需要许可证, 则 VASP 必须根据《虚拟资产法》进行登记才能从事虚拟资产服务。完成登记后, VASP 只能在规定的阈值内直接向公众成员发行虚拟资产, 并且必须向 CIMA 提交发行申请以获得其事先批准。CIMA 会根据某些考量来决定此类申请, 包括虚拟资产的性质、功能和目的及其可能对 CIMA 的职能产生的影响, 因为这些职能关乎反洗钱、金融服务市场和一般公众。已登记的 VASP 也可运行根据《虚拟资产法》许可的虚拟资产交易平台以发行超过规定阈值的新创虚拟资产, 但必须先获得 CIMA 的批准。如果发行虚拟资产涉及转让其他虚拟资产或兑换法定货币, 则 VASP 必须为涉及公众的每笔交易保持适当的记录, 供 CIMA 检查。

transaction involving the public and make these available for CIMA's inspection.

### How to register

A VASP who is not an existing licensee, but who is carrying on or wishes to carry on a virtual asset service for which a licence is not required, must submit a registration application along with the prescribed assessment fee to CIMA. Notification of any changes to information provided in an application must be given to CIMA within 15 days of such change – it is an offence not to comply with this requirement and renders a VASP liable on summary conviction to a \$20,000 fine.

Non-refundable assessment fees are payable within 30 days of CIMA's assessment and approval of applications for registration or licences. CIMA's assessment of fees takes into account the nature, size, scope and complexity of the virtual asset or Fintech service and CIMA calculates the fees within a prescribed range. Annual renewal fees are due on or before 15 January and prorated surcharges are applicable for late payment. A licence or registration lapses if annual renewal fees remain unpaid for three months.

### Virtual asset service providers' obligations

Section 9 of the Law sets out the general requirements for VASPs which concern the following:

- Annual accounts;
- Audits and compliance reports in response to requests from CIMA;
- 'Fit and proper' senior officers, trustees and beneficial owners;
- Security and protection of clients' personal data and virtual assets;
- Accurate communications;
- Anti-money laundering, counter-terrorist financing and counter-proliferation financing compliance;
- Registered office requirements;
- Document retention; and
- Notification requirements.

VASPs may not issue or transfer ten per cent or more of their shares or partnership interest without CIMA's prior approval. However, subject to conditions, the Law provides that CIMA may exempt VASPs with 95 per cent or more of their shares publicly traded on a recognized stock exchange from this prohibition.

### Existing licensees

Existing licensees who wish to carry on, or are currently carrying on, virtual asset services must notify CIMA of the nature and scope of their proposed or current services.

### 如何登记

对于并非是有许可证持有者但正在从事或希望从事无需许可证的虚拟资产服务的 VASP，必须向 CIMA 提交登记申请并支付规定的评估费。申请中所提供的信息如有任何变更，必须在变更后 15 天内通知 CIMA - 不遵守这一规定是违法的，一经简易程序定罪，VASP 会被处以 20,000 美元的罚款。

在 CIMA 评估并批准登记申请或许可申请后 30 天内支付评估费，此费用不予退还。CIMA 在评估费用时会考虑到虚拟资产或金融科技服务的性质、规模、范围和复杂性，在规定的范围内计算出费用。年续费于 1 月 15 日之前缴纳，逾期付款按比例收取附加费。如果三个月仍未支付年续费，则许可证或登记失效。

### 虚拟资产服务提供商的义务

《虚拟资产法》第 9 条规定了对 VASP 的一般要求，涉及以下方面：

- 年度帐目；
- 应 CIMA 的要求提供的审计和合规报告；
- “合适和适当的”高管、受托人和实益所有人；
- 客户个人数据和虚拟资产的安全和保护；
- 准确的通信；
- 反洗钱、反恐融资和反扩散融资的合规性；
- 对注册的办事处的要求；
- 文件保管；以及
- 对通知的要求。

未经 CIMA 事先批准，VASP 不得发行或转让其百分之十或以上的股份或合伙权益。但是，在符合条件的情况下，《虚拟资产法》规定，对于其 95% 或以上的股份在认可的证券交易所公开交易的 VASP，CIMA 可免除这一禁令。

### 现有许可证持有者

希望从事或正在从事虚拟资产服务的现有许可证持有者必须将其提议的服务或目前正在提供的服务的性质和范围通知 CIMA。如果提供商的服务被视为根据《虚拟资产法》需要

CIMA may direct an existing licensee to obtain a VASL if the provider's services are considered to be activities requiring a licence under the Law or are materially different from business activities licensed under other regulatory laws and require specific supervision. Alternatively, CIMA may require an existing licensee to apply for a sandbox licence (discussed further below), apply for a licence under another regulatory law; cease the virtual asset service or CIMA may grant a waiver to allow the existing licensee to provide certain virtual asset services.

### Sandbox licences

In certain circumstances, CIMA may require an applicant for registration or licensing to apply for a sandbox licence. A sandbox licence is a temporary licence which CIMA may grant for up to one year. If CIMA requires a VASP to apply for a sandbox licence, it must apply in the manner directed by CIMA and will need to provide such information as CIMA requests. This may happen in circumstances where:

- The virtual asset service is an innovative use of technology or method of delivery requiring supervision and oversight not offered by a licence or registration under any law;
- It is in the best interests of the public, existing licensees, licensees, registered persons or financial markets for the virtual asset service to be temporarily restricted or subject to specific requirements;
- The virtual asset service uses or promotes technology or a method of delivery that may create systemic risk to financial markets or the jurisdiction; or
- The virtual asset service poses a money laundering, terrorism financing or proliferation financing risk not properly mitigated by the Anti-Money Laundering regime or the Law.

A sandbox licensee is obliged to comply with all the requirements applicable to VASPs under the Law. CIMA may impose, or exempt a sandbox licensee from any of the requirements applicable to a VASL, along with additional restrictions specific to sandbox licensees outlined in the Law. CIMA may also review a sandbox licence at any time.

### Virtual asset custody services

Virtual asset custody services are subject to specific requirements, the contravention of any of which is an offence and may result in a fine of \$100,000. These requirements generally concern:

- Custodial arrangements in relation to which the Law prescribes minimum information requirements;
- Information technology best practices;

许可证的活动，或者其服务与其他监管法律所许可的商业活动有实质性差异并且需要特定的监管，则 CIMA 可以指示该现有许可证持有者去获取 VASL。或者，CIMA 可以要求现有许可证持有者去申请沙盒许可证（在下文中进一步论述），根据其他监管法律申请许可证；停止虚拟资产服务，或者 CIMA 可以给予豁免以允许现有许可证持有者提供某些特定虚拟资产服务。

### 沙盒许可证

在某些情况下，CIMA 可能要求登记申请人或许可证申请人去申请沙盒许可证。沙盒许可证是 CIMA 可以颁发的长达一年的临时许可证。如果 CIMA 要求 VASP 申请沙盒许可证，则 VASP 必须按照 CIMA 的指示进行申请，并且需要提供 CIMA 要求的信息。在以下状况下可能会发生这种情况：

- 虚拟资产服务是对技术或服务方式的创新使用，需要的监管和监督是根据任何法律获得的许可证或登记所无法提供的；
- 虚拟资产服务暂时受到限制或此项服务需遵守特定要求是符合公众、现有许可证持有者、许可证持有者、登记的人员或金融市场的最大利益的；
- 虚拟资产服务采用或推广可能对金融市场或辖区造成系统性风险的技术或服务方式；或者
- 虚拟资产服务会造成洗钱、恐怖主义融资或扩散融资的风险，而反洗钱制度或《虚拟资产法》无法适当减轻此风险。

沙盒许可证持有者有义务遵守《虚拟资产法》中适用于 VASP 的所有要求。CIMA 可以对沙盒许可证持有者施加或豁免任何适用于 VASL 的要求以及《虚拟资产法》中规定的针对沙盒许可证持有者的其他限制。CIMA 还可以随时审查沙盒许可证。

### 虚拟资产托管服务

虚拟资产托管服务必须遵守特定的要求，违反任何一项要求均属违法，可导致 100,000 美元的罚款。这些要求通常涉及以下方面：

- 《虚拟资产法》对其规定了最低信息要求的托管安排；
- 信息技术最佳实践；
- 与托管的虚拟资产相关的附带收益和附属收益的应

- The accrual of ancillary and subsidiary proceeds relating to virtual assets held in custody; and
- The safeguarding of virtual assets held on behalf of third parties and against theft and loss.

CIMA may prescribe additional requirements in relation to virtual asset custody services concerning (i) net worth; (ii) reporting, disclosures to clients; and (iii) safe keeping of client assets. CIMA may also determine that a requirement is in the best interests of the beneficial owners of the assets held by the licensee. Further, virtual asset custodians may not encumber virtual asset deposits held on behalf of clients, or have them encumbered by a third party, without the express agreement of the assets' beneficial owners.

### Virtual asset trading platforms

VASP licensees that operate virtual asset trading platforms must carry out due diligence on virtual assets and their issuers listed on the platform and obtain CIMA approval prior to engaging in securities and investment business in relation to virtual assets. Licensees may not do the following: (i) provide financing to clients unless disclosures have been made regarding the terms and risks of financing; (ii) engage in trading or market making behavior for their own accounts which could be detrimental to client interests unless it is necessary for the operation of the platform or has been disclosed to the clients; (iii) allow a virtual asset to be traded unless it has ensured the virtual asset is not presented in a deceiving manner or meant to defraud holders of funds or value; (iv) allow a client to purchase or trade in virtual assets unless the licensee has assured itself that the client is aware of the associated risks; or (v) provide fiat currency exchange services to users of the trading platform.

VASPs operating virtual asset trading platforms may also be subject to particular requirements imposed by CIMA including: (i) the nature of user access; (ii) the types of clients the VASP may market to; (iii) the types of virtual assets traded; (iv) net worth, reporting and listing requirements; (v) measures to prevent unfair trading practices; (vi) client disclosures; (vii) monitoring, supervision and suspension of trading; (viii) information technology and security; (ix) settlement and clearing processes; (x) financing; and (xi) anti-money laundering and counter-terrorist and counter-proliferation financing measures.

### Offences and penalties

Where a provision of the Law is contravened for which no penalty is prescribed, a person will be liable on summary conviction to a \$4,000 fine. Particular offences under the Law include the failure to notify changes to information provided in an application to CIMA within the requisite time period – this is punishable, upon summary conviction, with a \$20,000 fine.

计; 以及

- 对代表第三方持有的虚拟资产的保护及防盗防损保障。

CIMA 可能就有关虚拟资产托管服务的以下方面规定额外要求：(i) 净值；(ii) 向客户提供的报告、披露；以及 (iii) 对客户资产的安全保管。CIMA 也会确信某项要求是符合许可证持有人所持资产的实益所有人的最大利益的。此外，在资产实益所有人没有明确同意的情况下，虚拟资产托管人不得对代表客户持有的虚拟资产存款设押，或被第三方设押。

### 虚拟资产交易平台

运营虚拟资产交易平台的 VASP 许可证持有人必须对其平台上列出的虚拟资产及其发行人进行尽职调查，并在开展与虚拟资产有关的证券和投资业务之前必须获得 CIMA 的批准。许可证持有人不得执行以下操作：(i) 向客户提供融资，除非已披露有关融资条款和风险的信息；(ii) 为自己的帐户从事可能损害客户利益的交易或做市行为，除非这样操作是平台运行之需或已向客户披露；(iii) 允许虚拟资产进行交易，除非已确保虚拟资产没有以欺骗性的方式呈现或意图骗取持有人的资金或价值；(iv) 允许客户购买或交易虚拟资产，除非许可证持有人保证客户明白相关风险；或者 (v) 向交易平台的用户提供法定货币兑换服务。

运行虚拟资产交易平台的 VASP 也可能要遵守 CIMA 施加的特定要求，包括：(i) 用户使用的性质；(ii) 可能作为 VASP 推销对象的客户类型；(iii) 交易的虚拟资产的类型；(iv) 净资产、报告和上市要求；(v) 防止不公平交易行为的措施；(vi) 客户披露；(vii) 监测、监督和暂停交易；(viii) 信息技术与安全；(ix) 结算和清算流程；(x) 融资；以及 (xi) 反洗钱、反恐和反扩散融资措施。

### 违反与罚则

凡违反《虚拟资产法》的规定而未规定处罚的，一经简易程序定罪，将处以 4,000 美元的罚款。《虚拟资产法》中的特定违法行为包括未在规定的时间内就申请中提供的信息的变更通知 CIMA，这一经简易程序定罪，可处以 20,000 美元的罚款。

The penalties for carrying on, or purporting to carry on, a virtual asset service for which registration is required without being registered or holding a waiver under the Law range from a fine of \$25,000 to imprisonment for one year on summary conviction for a single offence. A cumulative fine of \$10,000 applies for each day the offence continues.

Carrying on, or purporting to carry on, virtual asset custody services, or operating a virtual asset trading platform, without a licence or waiver under the Law is an offence punishable on summary conviction with a fine of \$100,000 and imprisonment for one year. A fine of \$10,000 applies for each day that the offence continues.

### CIMA's powers and enforcement

Various powers are granted to CIMA to allow for the review, supervision and enforcement of the Law in respect of registered VASPs, licensees and sandbox licensees. These powers include the identification and investigation of those reasonably believed to be providing services in contravention of the Law. CIMA may also examine VASPs' business affairs through onsite inspections, auditors' reports and other means to ensure, amongst other things, that those activities are authorized under the Law, anti-money laundering compliance is in effect, licensees are financially sound and client information and assets are kept secure.

If CIMA knows or has reasonable grounds to believe that a VASP has failed to comply with its obligations under the Law, is carrying on business fraudulently or in a manner detrimental to the public interest, has contravened any Anti-Money Laundering legislation or any requirement under the Law, there are a number of actions the authority may take. These include revocation of the particular licence or cancellation of registrations, the imposition of conditions, requiring the VASP to take certain actions to remedy breaches and the appointment of a controller by CIMA to assume control of the licensee's affairs. If a VASP is deemed to be carrying out, or about to carry out, an act that is unsafe or an unsound practice, CIMA may direct the VASP to cease or refrain from the course of conduct. Failure to follow such a direction could result, on summary conviction, to a fine of \$50,000 or imprisonment for one year, or both; or, on conviction on indictment, a fine of \$100,000 or imprisonment for five years, or both.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information. The Chinese translation of this article has been adapted from the English original, please refer to the original in case of ambiguity.

对于从事或意图从事需要进行登记的虚拟资产服务而未进行登记或未依据《虚拟资产法》持有豁免权的，一经简易程序定罪，对单项违法行为的处罚范围从 25,000 美元罚款到一年监禁。违法行为每持续一天，就会累积罚款 10,000 美元。

未持许可证或未依据《虚拟资产法》持有豁免权而从事或意图从事虚拟资产托管服务或运行虚拟资产交易平台，即属违法行为，一经简易程序定罪，可处以 100,000 美元罚款和一年监禁不等。违法行为每持续一天，就会罚款 10,000 美元。

### CIMA 的权力和执行

CIMA 被授予多项权力，可以对登记的 VASP、许可证持有者及沙盒许可证持有者进行审查和监督并执行《虚拟资产法》。这些权力包括查明和调查那些被合理认为在违反了《虚拟资产法》的情况下提供服务的企业。CIMA 还可以通过现场检查、审计报告和其他方式审查 VASP 的业务活动，以确保（除了其他事情外）这些活动是根据《虚拟资产法》授权进行的，反洗钱合规性在有效地执行，许可证持有者的财务状况良好以及客户信息和资产受到安全保管。

如果 CIMA 知道或有合理的理由相信 VASP 未履行《虚拟资产法》规定的义务，以欺诈手段或以损害公共利益的方式开展业务，违反了任何反洗钱法规或《虚拟资产法》的任何要求，则当局可采取一些行动。这些行动包括撤销特定许可证或取消登记、施加条件、要求 VASP 采取某些具体行动来纠正其违规行为以及 CIMA 任命一位管理者来接管许可证持有者的事务。如果 VASP 被视为正在实施或即将实施某种不安全或不合理的行为，则 CIMA 可以指示该 VASP 停止或不要实施此行为。如果不遵从该指示，则一经简易程序定罪，可被处以 50,000 美元罚款或一年监禁，或两者并罚；或者，一经公诉程序定罪，可被处以 100,000 美元罚款或五年监禁，或两者并罚。

本文的内容并非详尽无遗，旨在提供简要概述和一般资料，而不应用于替代法律建议或法律意见。中文译本仅供参考，如有歧义，请以英文原文为准。

作者 Authors :

**Nicholas Pattman**  
Partner 合伙人  
nicholas.pattman@conyers.com  
+1 345 814 7765

**Rob Humphries**  
Counsel 顾问律师  
rob.humphries@conyers.com  
+1 345 814 7793