

GUIDELINES ON DIGITAL ASSETS



VANUATU FINANCIAL SERVICES COMMISSION

GUIDANCE NOTES

ON

DIGITAL ASSETS

SUPERVISION DEPARTMENT

GUIDELINES ON DIGITAL ASSETS

1. These Guidelines are issued under Section 19A of the Financial Dealers Licensing Act as amended (the Act). They provide guidance on how the Commission will assess applications for a Class D licence as a Financial Dealer under the Act, in the light of the Financial Dealers Licensing (Amendment) Act No. 9 of 2021.
2. Section 4 of the Act as amended (the Act) provides for the licensing of Class D license to carry on business of dealing in digital assets. The Act defines digital asset as **“an immaterial asset in digital form stored on a distributed ledger technology (such as blockchain) and representing a set of rights or value”**. This provides the legal basis for any business operator who wishes to conduct any activity regarding Digital Assets must take this law into account and subsequent licencing requirements on top of existing licencing requirements issued by the VFSC.
3. The Financial Dealers Licensing Act provides the right to legally carry out business of dealing in securities to its owner. Any company engaged in securities business activities such as trading as a brokerage, e-wallet services (for example, PayPal), or trading in shares, debentures; loan stock; bonds; certificates of deposits; options; derivatives; credit services, Forex trading, customer depositing, digital assets etc., must obtain a license under this act.
4. The Financial Dealers Licensing (Amendment) Act No. 9 of 2021 provides for an issuance of an additional class of licence (Class D) to trade in digital assets. The Act makes it explicitly clear that the only eligible persons who could apply for this license are those holding class A, B and C licenses. No other persons would be considered for the grant of this license.
5. The VFSC considers as a Digital Asset, any token in electronic/binary form which is representative of either the holder's access rights to a service or of the ownership of an asset. A Digital Asset, in this respect, includes a digital representation of value which:
 - a). Is used as a medium of exchange, unit of account, or store of value but which is not legal tender, even if it is denominated in legal tender.
 - b). Represent assets such as debt or equity in the promoting company; or
 - c). Provides access to a blockchain-based application, service or product.

A Digital Asset will, however, exclude:

- a). Any transaction in which a business, as part of an affinity or rewards programme, grants value, which cannot be exchanged for legal tender, bank credit or any Digital Asset; or
 - b). A digital representation of value issued by or on behalf of the publisher for use within an online game platform.
6. The VFSC regulates digital assets and related products and services to the extent they fall within the existing regulatory perimeter of dealing in securities.

GUIDELINES ON DIGITAL ASSETS

7. Digital assets may be or involve financial products depending on their individual features. It is the responsibility of each digital asset service provider to ensure they are complying with all relevant Vanuatu laws including the Financial Dealers Licensing Act.
8. The VFSC has limited this new asset class (Class D) to sophisticated and institutional investors only. Given the high-risk nature of the asset class, only investors who understands the risks and are looking for investment opportunities that produce high returns with what they may perceive as guaranteed returns will be allowed to trade in digital assets. While this can make digital assets like crypto currencies appealing, there's no such thing as a guaranteed high return, therefore VFSC will consider a grant of license only to Sophisticated investors, Expert Investors, Expert Funds, Specialized Collective Investment schemes, Professional Collective Investment Schemes (PCIS) and Closed-End Funds (CEF).
9. What needs to be clear is that some forms of digital assets like cryptocurrencies are volatile assets. They are highly speculative and asset class remains largely immature at present. Some digital assets may be or involve financial products that are regulated, and others may not.
10. Investors and consumers are not protected if a platform fails or is hacked. In many jurisdictions like Vanuatu, crypto assets are not recognised as legal tender. Investors are only protected to the extent that they fit within existing laws. Investors must be warned that they are not protected by any regulatory or statutory provisions if their investments ended up being fraudulent or a scam. The VFSC has implicitly outlined what is defined as a digital asset and what activities are regulated.
11. Digital Asset investments carry risk and remain speculative and investors who are yet to understand the complexity of the digital asset environment need to inform themselves of the associated risks. Class D license holders must ensure that adequate information including details of associated risks must be provided to investors so that investors could make informed decisions before engaging in digital assets investment.
12. If the digital asset or token falls within the legal definition of "financial product" in the law, then that asset would be regulated in a similar way to other investments. Among other things, this involves the person issuing the asset being required to hold a Financial Dealer's licence. If the digital asset is a financial product, such as a derivative or managed investment scheme, the issuer would then be bound by the Financial Dealers Licensing Act, and the licensing requirements.
13. VFSC also maintains a register of dealer licensees and will ensure that any party promoting or issuing a financial product, including digital assets without an authorised license issued by VFSC will be prosecuted under the relevant law.
14. Obligations under the Financial Dealers Licensing Act are stringent, and each licensee must adhere to the licencing requirements issued by the VFSC. If your business is involved with Digital assets such as cryptocurrency, tokens or stable

GUIDELINES ON DIGITAL ASSETS

coins you are required to hold a Class D License under the Financial Dealers Licensing Act.

15. If your company is giving advice, dealing, or providing other intermediary services for digital assets that are financial products, a range of Vanuatu laws apply, including the requirement to hold a Class D License under the Financial Dealers Licensing Act.
16. If the digital assets stored by your business fall within the definition of a 'financial product', you need to ensure you hold the appropriate custodial and depository authorisations and have third party custodian arrangements in place to ensure the proper safekeeping of clients' digital assets.
17. It is particularly important to ensure that ongoing disclosures are kept up to date, to both the investors and the regulator.
18. The Financial Dealers Licensing Act prohibits misleading or deceptive conduct in a range of circumstances, including in trade or commerce, in connection with financial services, and in relation to a financial product. The Act and its regulations that prohibit misleading or deceptive conduct may apply even if an interest in a digital asset is issued, traded or sold offshore.
19. Care should be taken to ensure promotional communications about a digital asset do not mislead or deceive potential consumers and do not contain false information. These include:
 - a). stating or conveying the impression that a digital asset (such as cryptocurrencies) offered are not a financial product if that is not the case;
 - b). stating or conveying the impression that a digital asset trading platform does not quote or trade financial products if that is not the case;
 - c). using social media to generate the appearance of a greater level of public interest in a digital asset;
 - d). undertaking or arranging for a group to engage in trading strategies to generate the appearance of a greater level of buying and selling activity for a digital asset;
 - e). failing to disclose adequate information about the digital asset, or
 - f). suggesting that the digital asset is a regulated product, or the regulator has approved the digital asset service provider if that is not the case.
20. A non-cash payment (NCP) facility can be a financial product which requires a VFSC financial dealer licence if payments can be made to more than one person. An intermediary that arranges for the issue of an NCP facility may need a licence, or to act on behalf of a licensee.
21. Entities may propose to issue financial products that:

GUIDELINES ON DIGITAL ASSETS

- a). are linked to, or reference, digital assets;
 - b). invest in digital assets, or
 - c). otherwise enable consumers and investors to have exposure to digital assets. If so, the entities will be providing a financial service in issuing such financial products and requires a Class D financial dealer's licence.
22. Entities that wish to apply for a new financial dealer licence must take note of the following:
- a). we will assess the application under relevant policy and, based on our risk-targeted framework, consider the regulations that already apply to financial products of that type generally;
 - b). applications for digital asset-related financial products are more likely to be novel applications – our experience to date indicates that assessment of those applications may take more time, and
 - c). we will work with businesses to identify the issues to be addressed in the application and will issue additional guidance or license conditions if we think that doing so may be helpful to the industry.
23. The VFSC has provided guidance on the meaning of 'provide financial product advice' and the meaning of 'deal in a financial product' in other licences and already provides guidance on the obligations that apply to providers of financial services.
24. An applicant seeking a class D licence must provide, not limited to the following:
- a). evidence of class A,B and C licenses;
 - b). detail business plan;
 - c). a constitution and compliance plan;
 - d). a compliant product disclosure statement (PDS) and comply with other disclosure obligations;
 - e). organizational structure with names of key individuals occupying key positions;
 - f). evidence of minimum unimpaired Capital of USD\$ 500,000;
 - g). Risk Management Strategy and Procedures;
 - h). detail information on custody arrangements;
 - i). AML/CTF Procedures regarding provision of custody services;
 - j). outsourcing agreement in relation to custody arrangements;
 - k). details of firm providing custody;
 - l). Internal control and compliance procedure manual;
 - m). details of Chief Technology officer;
 - n). details of measures to be put in place with regards to infrastructure, security and safety of digital assets;
 - o). detail information of arrangement to ensure confidentiality, security and reliability of client(s) information;

GUIDELINES ON DIGITAL ASSETS

- p). copy of promotion material(s) to be use in connection with the proposed business.
25. A Class D license holder must establish a physical presence in Vanuatu with the following key persons present in Vanuatu:
 - a). At least one director;
 - b). A Manager;
 - c). A Chief Technology officer.
 26. Initial coin offering (ICO) is prohibited under Class D license. This means that coin offering is illegal and cannot be issued by the holder of class D license.
 27. A holder of Class D license must establish an Escrow Account where investor's funds are held separately from the company's funds. The escrow account must be audited annually by an independent auditor and the audit reports must be file at VFSC, together with the company accounts no later than 90 days after the financial year.
 28. A holder of Class D license must ensure full compliance with the Anti- Money Laundering and Counter -Terrorism Financing Act No. 13 of 2014. This includes applying KYC principals such as CDD and ECDD when required and details of UBO of digital assets being traded must be kept on record and provided to VFSC.
 29. Right now, whilst recognising digital assets as an asset class under the Financial Dealers Licensing Act and allowing a Class D license holder to trade in digital assets, the VFSC acknowledges that there is no regulatory or legal framework at present for exchanges trading in these crypto assets to do so. There needs to be clear guidance around market manipulation and fraud which the VFSC will address once the proper legislation is written and enforced. Furthermore, if a company is entering into transactions concerning exchange of cryptocurrencies to real funds (cryptocurrency - fiat), it may be required to obtain an appropriate license from the Reserve Bank of Vanuatu.

Please contact the following person should you have any questions:

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GUIDELINES ON DIGITAL ASSETS