

VIRTUAL ASSETS ACT, 2022

No. 3



of 2022

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An Act to regulate the sale and trade of virtual assets, licensing of virtual asset service providers and issuers of initial token offerings, and to provide for matters connected, incidental and related thereto.

Date of Assent: 25.02.2022

Date of Commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title	1. This Act may be cited as the Virtual Assets Act, 2022.
Interpretation	2. (1) In this Act, unless the context otherwise requires — “asset” means a property of any kind; “asset token” means a token that represents a claim against the issuer which — (a) is intended to represent an asset and is embedded with underlying assets; (b) derives its value by reference to an underlying asset; (c) is secured by an underlying asset; or (d) is backed up by assets held as collateral for the primary purpose of encouraging price stability;
Cap. 08:07	“beneficial owner” has the meaning assigned to it in the Financial Intelligence Act, and “beneficial interest” shall be construed accordingly;
	“blockchain” means a virtual or digital distributed ledger or database of transactions relating to virtual assets which are recorded chronologically and capable of being audited;
Cap. 55:01	“Central Bank” means the Bank of Botswana established under the Bank of Botswana Act;

“comparable body” a body outside Botswana which has functions similar to those of the Regulatory Authority with respect to the regulation and licensing of a virtual asset business;

“competent authority” has the meaning assigned to it under the Financial Intelligence Act;

“customer” has the meaning assigned to it in the Financial Intelligence Act;

“distributed ledger technology” –

- (a) means a virtual or 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 virtual asset service provider to its customers;

“fiat currency” means –

- (a) notes, coins or tokens issued into circulation by the Central Bank in terms of the Bank of Botswana Act; and
- (b) notes, coins or money of a jurisdiction that is designated by the Government of that jurisdiction as a legal tender;

“financial institution” has the meaning assigned to it under the Bank of Botswana Act;

“founder” means a person who is entitled to a significant interest in the issuer or organiser, and includes a beneficial owner if different from the issuer or organiser;

“initial token offerings” means an offer to the public, by an issuer, for the sale of a virtual token in exchange for fiat currency or another virtual asset;

“insider” has the meaning assigned to it under the Securities Act;

“inspector” means an inspector appointed under section 6 and includes an investigator;

“issuer” means a person contractually responsible for issuing a virtual token;

“licence” means a licence issued in terms of this Act;

“licence holder” means a person issued with a licence under section 11;

“market abuse” means –

- (a) insider dealing;
- (b) the unlawful disclosure of insider information; or
- (c) market manipulation in relation to any transaction, order or behaviour concerning a virtual asset;

“non-fungible token” means a unique virtual token created for use in specific applications which cannot be –

- (a) divided and is not interchangeable with any other type of virtual token; and

- (b) sold in a secondary market;
- “offer” means a document, notice, circular, advertisement, prospectus or whitepaper issued to the public or accessible electronically –
 - (a) inviting applications or offers to subscribe for or purchase virtual assets; or
 - (b) offering virtual assets for subscription or purchase;
- “organiser” means a person who, if different from the issuer, whether alone or in conjunction with other persons, procures the issuance of virtual assets through an issuer on behalf of a customer;
- Cap. 08:03 “property” has the meaning assigned to it under the Proceeds and Instruments of Crime Act;
- Cap. 46:08 “Regulatory Authority” means the Non-Bank Financial Institutions Regulatory Authority established under the Non-Bank Financial Institutions Regulatory Authority Act;
- Cap. 56:08 “security” has the meaning assigned to it under the Securities Act;
- “significant interest” means beneficial interests cumulatively representing more than 10 per cent of the issued and outstanding equity interests of the organiser, issuer or beneficial owner;
- “virtual asset” –
 - (a) means a digital representation of value that –
 - (i) may be digitally traded or transferred, and may be used for payment or investment purposes, or
 - (ii) is distributed through a distributed ledger technology where value is embedded or in which there is a contractual right of use, and includes virtual tokens; and
 - (b) excludes –
 - (i) a digital representation of legal tender as provided for under the Bank of Botswana Act, and
 - (ii) securities and other financial assets that are regulated under the Securities Act;
- “virtual asset business” includes a trade or business –
 - (a) that operate as an issuer of initial token offerings;
 - (b) that provides services related to a virtual token exchange;
 - (c) that operates as a payment service provider utilising virtual assets;
 - (d) that operates as a virtual asset service provider, including providing a distributed ledger platform which facilitates the –
 - (i) exchange between virtual assets and fiat currency,
 - (ii) exchange between one or more forms of virtual assets, and
 - (iii) transfer of virtual assets; or

(e) that participates in and provides financial services related to an issuer's offer or sale of a virtual asset as may be prescribed;
"virtual asset service" means a service provided in relation to a virtual asset business or transaction;

"virtual asset service provider" means a person who –

- (a) under an agreement, as part of a business, undertakes a virtual asset service on behalf of another person; or
- (b) is a dealer or is willing to deal, on own account, by buying and selling virtual assets at prices set by that person, and includes a –
 - (i) market maker or liquidity provider,
 - (ii) system that provides virtual liquidity, allowing traders to buy and sell derivatives on the blockchain, or
 - (iii) virtual automated market maker;

"virtual currency token" means a digital representation of value which is digitally traded and functions as a –

- (a) medium of exchange;
- (b) unit of account; or
- (c) store of value;

"virtual token" includes a –

- (a) virtual currency token;
- (b) asset token;
- (c) non-fungible token; and
- (d) any other digital representation of value designated by the Regulatory Authority to be a virtual token for purposes of this Act; and

"virtual token exchange" means a marketplace in the distributed ledger technology platform for the sale, trade, transfer or exchange of a virtual token for fiat currency or virtual token.

(2) This Act is declared to be a financial services law for purposes of the Non-Bank Financial Institutions Regulatory Act.

3. (1) This Act shall apply to –

- (a) any person who as an organiser, issuer, founder, purchaser or investor participates in the formation, promotion, maintenance, organisation, sale or redemption of an initial token offering; and
- (b) any person carrying on a virtual asset business irrespective of the physical location from which the activity is carried out.

(2) This Act shall not apply to –

- (a) a person only by reason of that person acting in a professional capacity on behalf of persons engaged in procuring the organisation, promotion, issuance, sale or trade of virtual assets;
- (b) transactions or virtual assets in which a person grants a value as part of an affinity or rewards program, which value cannot be taken from or exchanged with the person for legal tender, bank credit or any virtual asset;
- (c) a digital representation of value issued by or on behalf of the publisher and used within an online game, game platform or game sold by the same publisher or offered on the same game platform;

Application of
Act

- (d) non-fungible tokens; or
- (e) electronic representations of fiat currency, security or any other financial asset under the Bank of Botswana Act or Securities Act.

PART II – Functions and Powers of the Regulatory Authority

Functions of
Regulatory
Authority

- 4. (1) The Regulatory Authority shall —**
- (a) license virtual asset service providers and issuers of initial token offerings;
 - (b) regulate, monitor and supervise the issuance of virtual assets and persons conducting virtual asset business in Botswana;
 - (c) develop rules, guidance and codes of practice in connection with the conduct of virtual asset business and initial token offerings;
 - (d) advise the Minister on all matters relating to virtual assets business;
 - (e) promote investor education and other conditions that facilitate innovation and development of virtual asset businesses within Botswana;
 - (f) publish notices, guidelines, bulletins and policies regarding the interpretation, application and enforcement of this Act;
 - (g) in collaboration with the Central Bank, ensure the financial soundness and stability of the financial system in Botswana in respect of virtual assets;
 - (h) give directions to, and take enforcement action against, a licence holder; and
 - (i) do such other acts and things as may be necessary for the purposes of this Act.

(2) The Minister, may, on the recommendation of the Regulatory Authority, by Order published in the *Gazette*, set up such advisory bodies as may be necessary to examine and report on any matter in respect to the administration of this Act.

Request for
information

5. (1) The Regulatory Authority may, by notice in writing, require a person to furnish to the Regulatory Authority, at such time and place and in such form as may be prescribed, information and documentation, with respect to —

- (a) a virtual asset business;
 - (b) an offer, pursuant to section 23; or
 - (c) a beneficial owner of a virtual asset business.
- (2) A person in subsection (1), may include —
- (a) any person who is, was or appears to be or to have been, a virtual asset service provider or issuer of initial token offerings;
 - (b) an agent of a virtual asset service provider or issuer of initial token offerings;
 - (c) an intermediary involved in a virtual asset service; or
 - (d) a person who issues, or appears to have issued, an offer.

(3) The Regulatory Authority may, request a virtual asset service provider or issuer of initial token offerings to appear before the Authority or a person appointed by the Regulatory Authority, at such time and place as it may specify, to answer questions and provide information and documentation with respect to a virtual asset, initial token offering or an offer issued by the virtual asset provider or issuer of initial token offerings.

(4) Where a person is appointed under subsection (3), such person shall, for the purposes of carrying out his or her functions, have all the powers conferred on the Regulatory Authority under this section, and a requirement made by such person shall be deemed to have the same force and effect as a requirement made by the Regulatory Authority.

(5) Where the person required to provide information or documentation under this section does not have the relevant information or documentation, the person shall, to the best of his or her knowledge disclose to the Regulatory Authority where that information or documentation may be found, and the Regulatory Authority may require any person who appears to be in possession of that information or documentation to provide it.

6. (1) The Regulatory Authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the activities or operations of a virtual asset business or licence holder.

Appointment
of inspectors

(2) An inspector appointed in terms of subsection (1) –

(a) may exercise all the powers conferred on the Regulatory Authority under this Part, and any requirement made by the inspector shall have the same effect as a requirement made by the Regulatory Authority; and

(b) shall submit a report of his or her investigations under this section to the Regulatory Authority, within one month after the conclusion of the investigations.

7. (1) An inspector appointed in terms of section 6 may, on producing evidence of his or her authority, enter premises occupied by a person on whom a notice has been issued under section 5 or whose virtual asset business is being investigated under section 6, for the purposes of –

Right of entry

(a) obtaining information or documents required under the notice;

(b) the investigation; or

(c) exercising any of the powers conferred by sections 5 and 6.

(2) Where an inspector has reasonable cause to believe that if the notice to be issued in terms of section 5 would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, the inspector may, on producing evidence of his or her authority, enter any premises referred to in subsection (1) for the purpose of obtaining any information or documents, being information or documents that could have been required under such notice as is referred to under section 5.

(3) For the purposes of any action taken under the provisions of this section, the Regulatory Authority may request the assistance of the Commissioner of Police, who may for such purpose, exercise such powers as are vested in the Botswana Police Service for the prevention of offences and the enforcement of law and order.

PART III – *Licensing of Virtual Asset Businesses*

Virtual asset
business

8. For purposes of this Act, a person carries on a virtual asset business if –

- (a) irrespective of their physical location, whether in or outside Botswana, the person offers a virtual asset service to persons resident in Botswana; or
- (b) the person is registered or incorporated under the laws of Botswana and offers a virtual asset service to persons in or outside Botswana.

Prohibition of
unlicensed
virtual asset
business

9. A person shall not carry out or participate in a virtual asset business unless the person is the holder of a virtual asset service provider licence or issuer of initial token offerings licence issued in terms of section 11.

Application
for licence

10. (1) A person who wishes to carry out or participate in a virtual asset business may apply for a virtual asset service provider licence or issuer of initial token offerings licence.

(2) An application in subsection (1) shall –

- (a) be in such form and manner as may be prescribed;
- (b) specify the licence applied for;
- (c) be accompanied by –
 - (i) proof of the applicant’s registration with a comparable body, where applicable,
 - (ii) a certificate of incorporation, if the applicant is a legal person,
 - (iii) a business plan, including financial and operational projections, setting out the nature and scale of the virtual asset business activities proposed to be carried out, technological requirements and where applicable, staffing requirements,
 - (iv) particulars of the applicant’s arrangements for the management of the virtual asset business,
 - (v) policies and measures to be adopted by the applicant to meet the obligations under this Act and the Financial Intelligence Act,
 - (vi) particulars and information relating to customer due diligence of each organiser, issuer, founder, investor, beneficial owner, security holder, director and officer of the virtual asset business, and
 - (vii) such fee as may be prescribed.

Cap. 46:04

(3) A bank licensed under the Banking Act may, with the approval of the Central Bank, make an application to the Regulatory Authority for a licence to carry out a virtual asset business.

(4) The Regulatory Authority may require an applicant to provide such additional information and documents as are reasonably necessary, upon giving the applicant 14 days' written notice.

(5) An applicant may withdraw an application by giving seven days' written notice to the Regulatory Authority at any time before the determination of the application.

11. (1) The Regulatory Authority may, on application made under section 10, issue a licence where —

Issue of licence

- (a) in the case of a natural person, the applicant is —
 - (i) a fit proper person, and
 - (ii) resident in Botswana;
- (b) in the case of a legal person, the applicant, its beneficial owners, their associates and officers are fit and proper persons to carry out virtual asset business activities for which the licence is sought; and
- (c) the applicant has adequate resources, infrastructure, staff with the appropriate competence, experience and proficiency to carry out the business activities of a virtual asset service provider or issuer of initial token offerings.

(2) The Regulatory Authority shall, in addition to the other relevant requirements under the Financial Intelligence Act or other related enactments, when determining whether a person is fit and proper under subsection (1), have regard to the —

- (a) financial status or solvency of the person;
- (b) education or other qualifications and experience of the person, taking into account the nature of the role or functions that the person will perform;
- (c) ability of the person to carry on the virtual asset business competently, honestly and fairly;
- (d) ability of the person to ensure a satisfactory standard of governance and operational conduct; and
- (e) reputation and character —
 - (i) where the person is a natural person, of the natural person, or
 - (ii) where the person is a legal person, of the legal person, its directors, shareholders, senior management or any other officer.

(3) The Regulatory Authority may, in addition to subsection (2), take into account —

- (a) the virtual asset business activities proposed to be carried out by the applicant;
- (b) the capacity of the applicant to carry out the business activities;
- (c) any international standard relating to a virtual asset business;
- (d) any information obtained from a competent authority or comparable body; and
- (e) whether the granting of a licence to the applicant may pose a risk to purchasers, investors or the public.

(4) The Regulatory Authority may grant an applicant a licence in such form and manner as may be prescribed, and upon payment of a prescribed fee.

Request to
cease virtual
asset business

12. (1) A licence holder may, in such form and manner as may be prescribed, make a request to cease activities or operations as a virtual asset service provider or issuer of initial token offerings.

(2) A licence holder under subsection (1) shall, within seven days of submitting the request, submit a written plan to the Regulatory Authority setting out the steps the licence holder will follow to cease the virtual asset business.

(3) The plan in subsection (2) shall state –

- (a) the full names and physical address of the person who will manage the licence holder's cessation of the virtual asset business;
- (b) the period required to cease the business operations;
- (c) the manner in which customer files or accounts will be closed and secured;
- (d) customer notification procedures;
- (e) customer transfer procedures, if applicable.

(4) The Regulatory Authority shall, upon receipt of 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, give directions to the licence holder and the licence holder shall comply with such directions.

Suspension or
revocation
of licence

13. The Regulatory Authority may, at any time, suspend or revoke a licence, where –

- (a) the Regulatory Authority considers that the licence holder is not a fit and proper person to provide a virtual asset service or issue initial token offering in terms of this Act;
- (b) the Regulatory Authority considers that the licence holder does not fulfil the requirements of, or has contravened, any of the provisions of this Act, or has failed to satisfy or comply with any obligation or condition to which the licence is subject to;
- (c) the Regulatory Authority is furnished, by or on behalf of the licence holder, with information which is false, inaccurate or misleading;
- (d) the licence holder has obtained the licence by making false statements or by any other irregular means;
- (e) the licence holder has not commenced the virtual asset business that the licence holder is authorised to provide within 12 months, from the date of issue of the licence, or has ceased to provide the virtual asset service;
- (f) the Regulatory Authority considers it desirable to suspend or revoke the licence for the protection of customers and the public;
- (g) a licence holder makes a request for the suspension or revocation of the licence; or
- (h) a competent authority or comparable body makes a request for the suspension or revocation of the licence.

Provided that upon receipt of the written request, the Regulatory Authority may conduct its own investigation in terms of sections 6 and 7.

- 14.** (1) Where the Regulatory Authority makes a decision to —
- (a) vary any condition to which the licence is subject or to impose a condition thereon; or
 - (b) suspend or revoke a licence,
- the Regulatory Authority shall give the licence holder 21 days' written notice of its intention to do so, setting out the reasons for the decision it proposes to take.
- (2) A licence holder may, within 14 days after receipt of the notice given under subsection (1), make written representations to the Regulatory Authority, stating reasons why the proposed decision should not be taken, and the Regulatory Authority shall consider any representation so made before arriving at a final decision.
- (3) The Regulatory Authority may, where it is satisfied that the licence holder fulfills the requirements of this Act, lift the suspension on such conditions as it may consider necessary, including varying any condition to which the licence is subject or imposing further conditions thereon.
- 15.** (1) Notwithstanding section 14, the Regulatory Authority may —
- (a) suspend a licence, without notice, where the Regulatory Authority considers that an immediate suspension is necessary to protect the public;
 - (b) revoke a licence, without suspension, where the licence holder has made a request for the revocation; or
 - (c) immediately revoke a licence, without suspension, where the Regulatory Authority considers it necessary to do so in the public interest for purposes of section 13 (a) to (d), (f) and (h).
- (2) The Regulatory Authority shall, as soon as is practicable, notify a licence holder of its decision, in writing.
- 16.** Where the Regulatory Authority revokes a licence in terms of section 15 (1)(c), the Regulatory Authority —
- (a) shall, as may be necessary for purposes of the Financial Intelligence Act, notify comparable bodies and competent authorities of the revocation;
 - (b) shall, by notice in *Gazette*, notify the public of the revocation; and
 - (c) may make a written request to a competent authority for immediate deregistration, dissolution or winding up of the licence holder.
- 17.** (1) A licence holder who wishes to assign or transfer —
- (a) a licence issued under section 11; or
 - (b) beneficial ownership in a virtual asset business,
- shall, in such form and manner as may be prescribed, and on payment of a prescribed fee, make an application to the Regulatory Authority for the assignment or transfer of the licence or beneficial ownership.
- (2) An assignment or transfer made by a licence holder in contravention of subsection (1), shall be null and void and constitute sufficient grounds for the Regulatory Authority to revoke the licence.

Notice of
intention to
suspend or
revoke licence

Suspension or
revocation of
licence without
notice

Notification of
revocation,
winding up etc.

Assignment
and transfer
of licence or
beneficial
ownership

Information on assignment and transfer of licence or beneficial ownership

18. (1) Where the Regulatory Authority, pursuant to an application made under section 17, grant approval of the assignment or transfer of a licence or beneficial ownership —

- (a) the founder shall obtain and hold the required and accurate information on the transfer, including the required and accurate information on beneficial owners;
- (b) the founder shall submit the required and accurate information obtained and held pursuant to paragraph (a) to a beneficial owner, other than a financial institution, immediately and securely; and
- (c) the beneficial owner shall obtain and hold the required and accurate information on the assignment or transfer.

(2) A founder and beneficial owner shall record the information to be obtained and held pursuant to subsection (1) in such form and manner as may be prescribed and make it readily available to the Regulatory Authority and to a competent authority or comparable body upon request.

(3) The founder and beneficial owner shall, before executing the transfer of the licence or beneficial ownership, ensure that the founder has risk-based policies and procedures in place for the purposes of determining whether the information required to effect the transfer —

- (a) is complete; or
- (b) is consistent with the virtual asset service provider or issuer of initial token offerings' own records.

19. (1) The Regulatory Authority shall establish and maintain, in such form and manner as may be prescribed, a register of persons licensed under this Part to carry on a virtual asset business.

(2) Without limiting the generality of subsection (1), the register shall state —

- (a) the full names and physical address of the licence holder, including the address of the virtual asset business, if different;
- (b) the licence, in respect of the virtual asset business, held by a licence holder, including any licence issued, or registration, by a comparable body with respect to the virtual asset business;
- (c) virtual asset services provided by the licence holder;
- (d) name and physical address of every organiser, issuer, founder, investor, beneficial owner, security holder, director and officer of the virtual asset business;
- (e) any conditions imposed by the Regulatory Authority on the virtual asset business or licence; and
- (f) any other information as the Regulatory Authority may consider necessary.

(3) The register kept in terms of subsection (1) shall be open for inspection to any member of the public upon payment of a prescribed fee.

(4) A licence holder to which an entry in the register relates, shall as soon as practicable after the licence holder becomes aware of any error in the entry or any change in circumstances that is likely to have a bearing on the accuracy of the entry, give notice in writing to the Regulatory Authority of the error or change in circumstances, as the case may be.

Register of virtual asset service providers and issuers of virtual token offerings

PART IV – *Obligations of Licence Holders*

20. (1) A licence holder that has custody of one or more virtual assets for a customer shall –

Custody and protection of customer assets

- (a) maintain, in its custody, a sufficient amount of each type of virtual asset in order to meet the licence holder's obligations to the customer; and
 - (b) meet all financial requirements, as may be prescribed.
- (2) The virtual asset referred to in subsection (1) shall –
- (a) be held by the licence holder for the customer entitled to the virtual asset;
 - (b) not be the property or virtual asset of the licence holder; and
 - (c) not be subject to the claims of creditors of the licence holder.

21. A licence holder shall establish systems and controls in the virtual asset business that are adequate and appropriate for the scale and nature of the business activities, including systems and controls which adequately and appropriately address the –

Prevention of market abuse

- (a) recording, storing, protection and transmission of information;
- (b) effecting and monitoring of transactions;
- (c) 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 the transaction;
- (d) safeguarding and administration of virtual assets belonging to customers; and
- (e) business continuity and planning, in the event of a disruption of a virtual asset service.

22. (1) A person who desires to directly or indirectly acquire a beneficial interest in a licence holder shall make an application, to the Regulatory Authority in such form and manner as may be prescribed and upon payment of a prescribed fee, for the acquisition of such interest.

Acquisition of beneficial interest in licence holder

(2) An application made in terms of subsection (1) shall include sufficient information to enable the Regulatory Authority to consider the proposed acquisition in relation to –

- (a) the nature of the proposed acquisition;
 - (b) who the proposed beneficial owner is and any person who has control or management of the beneficial owner; and
 - (c) how the proposed acquisition is to be financed.
- (3) In assessing a proposed acquisition, the Regulatory Authority shall have regard to –
- (a) the likely influence of the proposed beneficial owner on the licence holder;
 - (b) the suitability of the proposed beneficial owner and the financial soundness of the proposed acquisition; and
 - (c) whether there are reasonable grounds to suspect that the acquisition is a suspicious transaction.

(4) The Regulatory Authority may, where it grants or refuses to grant approval on the proposal to acquire a beneficial interest in a licence holder, inform the proposed beneficial owner, in writing, and shall give reasons for the grant or refusal of the approval.

(5) For the purposes of this sub section (3), “suspicious transaction” has the meaning assigned to under the Financial Intelligence Act.

Offer of
virtual assets

23. (1) A licence holder who offers a virtual asset shall provide, in the offer –

- (a) information that is accurate and not misleading;
- (b) information that is consistent with the information contained in the whitepaper published in terms of section 24, or with the information required to be in the whitepaper;
- (c) a statement that a whitepaper has been or will be published in terms of section 24 and the addresses and times at which copies of the whitepaper are or will be available to the public; and
- (d) information concerning the initial token offering or the admission to trading on a virtual asset exchange which shall be consistent with the information contained in the whitepaper.

(2) For purposes of subsection (1), “information” shall include the name of any person endorsing the licence holder’s whitepaper.

Issuance of
white paper

24. (1) A licence holder shall, in its white paper, provide full and accurate disclosure of information which would allow potential purchasers to make an informed decision.

(2) A licence holder shall publish its white paper by –

- (a) posting a copy on a website operated and maintained by it, or by a third party for and on its behalf, which shall be readily accessible to, and downloadable by, potential purchasers for the duration of the offer period and for not less than 14 days after the offer period ends; or
- (b) publishing it in a newspaper circulating in Botswana or the *Gazette*.

(3) The white paper required to be published pursuant to subsection (2) shall be signed by every member of the governing body of the licence holder.

(4) The Regulatory Authority may order a licence holder to amend its white paper to include supplementary information.

(5) A licence holder shall, after it has published a white paper and becomes aware of any information which could affect the interests of purchasers before the close of the offer period, within seven days, give written notice to the Regulatory Authority and disclose that information by a supplement to the white paper.

(6) A licence holder who fails to comply with subsection (5) commits an offence and is liable to a fine not exceeding P300 000 and to imprisonment for a term not exceeding two years, or to both.

Classification
of virtual
assets

25. (1) A licence holder shall identify the class or classes of virtual assets which are available for subscription in its white paper.

(2) A licence holder shall make an application to the Regulatory Authority in such form and manner as may be prescribed and upon payment of a prescribed fee, to change the class or classes of virtual assets to be offered by the licence holder.

(3) Where, pursuant to subsection (2), the Regulatory Authority approves a change of class or classes of virtual assets, the licence holder shall amend and publish its white paper in accordance with section 24.

PART V – *Professional Conduct and Compliance of Licence Holders*

- 26.** A licence holder shall, in carrying out a virtual asset business —
- (a) act honestly and fairly;
 - (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.
- 27.** A licence holder shall implement and maintain measures for preserving the confidentiality of information of customers.
- 28.** (1) A licence holder shall implement and maintain —
- (a) record keeping measures for the accurate collection of information and documents related to the originator, founder and beneficial owner of a virtual asset business; and
 - (b) in relation to the protection of personal data relative to the customer, data protection measures consistent with the Data Protection Act and as may be prescribed.
- 29.** (1) A licence holder shall, every year not later than three months after the close of its financial year, file with the Regulatory Authority an audited financial statement, in respect of all transactions related to the licence holder’s virtual asset business activities.
- (2) 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.
- 30.** (1) A licence holder may make an application to the Regulatory Authority, in such form and manner as may be prescribed, to —
- (a) modify the scope of the virtual asset business activities;
 - (b) re-organise its legal structure;
 - (c) merge with another entity; or
 - (d) change its name.
- (2) A licence holder shall not, without the approval of the Regulatory Authority —
- (a) expand the scope of its activities;
 - (b) issue new tokens;
 - (c) merge with another entity;
 - (d) appoint a new director or partner;
 - (e) add or reduce its shareholders; or
 - (f) change or modify its name.

Professional conduct of licence holder

Confidentiality of customer information

Data protection

Audited financial statements

Material change to business activities

PART VI – *General Provisions*

General offences
and penalties

31. (1) A person who carries out a virtual asset business in contravention of this Act commits an offence and is liable, where no specific penalty is provided, to a fine not exceeding P250 000, or imprisonment for a term not exceeding five years, or to both.

(2) A person who –

- (a) wilfully makes any misrepresentation in any document required to be submitted under this Act;
- (b) wilfully makes any statement or gives any information required for the purpose of this Act which the person knows to be materially false or misleading; or
- (c) knowingly fails to disclose any fact or information required to be disclosed for the purposes of this Act,

commits an offence and is liable to a fine not exceeding P100 000, or to imprisonment for a term not exceeding two years, or to both.

(3) A person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any document, information stored on a computer or other device or other thing that the person knows or ought reasonably to know is relevant to the Regulatory Authority, commits an offence and is liable to a fine not exceeding P1000 000 or to imprisonment for a term not exceeding eight years, or to both.

(4) Where an offence has been committed under this Act and it is proved that the offence occurred with the consent, knowledge, connivance or gross negligence of a director or senior management official of the licence holder, or any person purporting to act in any such capacity, each such person commits offence and is liable to same penalty as provided for under relevant section under this Act.

Onus of proof

32. If in any charge under this Act it is alleged that an offence is committed –

- (a) evidence that an offence under this Act has been committed shall be sufficient proof that such an offence was committed with the knowledge of the person charged; and
- (b) the burden of proving any fact which would be a defence to a charge for contravening any provision of this Act shall lie upon the person charged or accused person.

Administrative
sanctions

33. (1) Notwithstanding any other action which may be taken by the Regulatory Authority for contravention of this Act, the Regulatory Authority may, in addition to such action, impose an administrative penalty for the contravention, including –

- (a) issuing an order of restitution;
- (b) an order for disgorgement of profits or unjust enrichment;
- (c) an application to the Tribunal established under Non-Bank Financial Institutions Regulatory Authority for an order to take such action as may be necessary to protect customers;

- (d) payment of an administrative penalty as may be prescribed; or
- (e) an order imposing any other penalty or sanction as the circumstances of the case may require.

(2) An order made under subsection (1) shall have the same force and effect as an order of the High Court and be enforceable in like manner.

34. A person who is aggrieved by the decision of the Regulatory Authority made in accordance with the provisions of this Act, may appeal such decision to the Tribunal established under the Non-Bank Financial Institutions Regulatory Authority Act.

Appeals against
decisions of
Regulatory
Authority

35. Where, on the commencement of this Act, a person is carrying on a virtual asset business, the person shall make an application in such a manner as may be prescribed, not later than three months after the commencement of this Act, to be licensed as a virtual asset service provider or issuer of initial token offerings.

Transitional
provisions

36. (1) The Minister may make regulations providing for any matter under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to the provisions of this Act.

Regulations

(2) Without limiting the generality of subsection (1), the regulations may provide for any of the following matters –

- (a) the setting up advisory bodies under section 4;
- (b) the form and manner of the information to be submitted to the Regulatory Authority under section 5;
- (c) the form and manner for applying for a licence in terms of section 10;
- (d) the form and manner for the issue of a licence under section 11;
- (e) the form and manner for the application for a transfer or assignment of a licence or beneficial ownership under section 17;
- (f) the recording of information on assignment and transfer of licence or beneficial ownership under section 18;
- (g) the form and manner a register under section 19 shall be established and maintained;
- (h) the form and manner for the acquisition of beneficial interest under section 22;
- (i) the form and manner for an application to change the class of virtual assets under section 25;
- (j) the payment of fees in respect of any matter in this Act; or
- (k) any matter required to be provided for in relation to the Regulatory Authority.

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.